

No. 15172

United States
Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

W. B. JONES LUMBER COMPANY, INC. and
LUMBER AND SAWMILL WORKERS'
UNION, LOCAL 2288, AFL, Respondents.

Transcript of Record

Petition for Enforcement of an Order of the
National Labor Relations Board

FILED

NOV - 9 1956

PAUL R. O'BRIEN, CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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United States of America
Before the National Labor Relations Board
Twenty-First Region
Case No. 21-CA 2116

W. B. JONES LUMBER COMPANY, INC.
and
DON F. TOOZE, an Individual.

ANSWER OF W. B. JONES LUMBER COMPANY, INC.

Comes now the respondent above named, W. B. Jones Lumber Company, Inc. and answers the complaint on file herein as follows:

I.

Answering the allegations contained in Paragraphs II, III, V, VI, VIII, IX, XII and XIII, this defendant denies generally and specifically each, every and all of the said allegations and denies that Don F. Tooze at any time requested reinstatement as an employee of this answering respondent.

II.

Answering the allegations contained in Paragraphs IV, VII, X, XI and XIV, this answering defendant has no information or belief sufficient to enable it to answer same, placing its denial on that ground, denies each, every and all of the said allegations.

For a second, separate and affirmative answer to the complaint on file herein, this respondent admits, denies and alleges as follows:

I.

That on or about November 17, 1954 this respondent was advised by the Lumber and Sawmill Workers Union, Local 2288 A. F. L., that Don F. Tooze was no longer a member in good standing of the said union, and was no longer eligible for employment with the respondent, and was ordered by said union to dismiss and discharge the said Don F. Tooze, notwithstanding that the respondent was and has been at all times satisfied with said Don F. Tooze was an employee and worker. That the said union further advised this respondent that unless the said Don F. Tooze was forthwith discharged that the said union would cause a picket line to be placed at this respondent's plant. That in order to avoid this eventuality and because said Don F. Tooze was no longer a member in good standing of the union, and to comply with the said union notice, this respondent discharged the said Don F. Tooze. That at all times mentioned herein this respondent has been ready and willing to reinstate the said Don F. Tooze to this respondent's employ.

Wherefore this respondent prays that the complaint on file herein as to this respondent be dismissed, and that the complainant take nothing by virtue thereof, and for such other and further relief

as to the National Labor Relations Board may seem proper.

Dated this 2nd day of May, 1955.

/s/ JOHN M. McCORMICK,
Attorney for W. B. Jones Lum-
ber Company, Inc.

Duly Verified.

Affidavit of Service by Mail Attached.

—

United States of America

Before the National Labor Relations Board

Division of Trial Examiners

Branch Office

San Francisco, California

Case No. 21-CA-2116

W. B. JONES LUMBER COMPANY, INC.

and

DON F. TOOZE, An Individual

Case No. 21-CB-671

LUMBER AND SAWMILL WORKERS'

UNION, LOCAL No. 2288, AFL

and

DON F. TOOZE, An Individual

ORDER TO SHOW CAUSE

A question having arisen concerning the accuracy of the transcript of a portion of testimony of the

witness Richard Smith, given in the above proceeding, it is

Ordered that the parties in this proceeding show cause before the undersigned at his office, Room 205, 630 Sansome Street, San Francisco, California, at 10 a.m. on July 11, 1955, why the transcript of testimony of the said witness should not be corrected by substituting the figures \$324,015.68 for the figures \$32,415.68 at line 3, page 293 of the said transcript; and it is further

Ordered that in lieu of appearing in person or through the person of counsel at the said time and place, the parties may adduce such evidence as they may respectively desire on the subject of the question raised above by means of duly sworn affidavits, and may submit such written arguments as may appropriately bear on the question, the said affidavits and written arguments to be filed in triplicate with the undersigned, either by mail or by other means of delivery, at his said office on or before 10 a.m., July 11, 1955.

Dated: July 5, 1955.

/s/ HERMAN MARX,
Trial Examiner

Affidavit of Service and Postal Return Receipts
Attached.

ARTHUR GARRETT

Attorney at Law

2200 W. 7th Street

Los Angeles 57, California

DUnkirk 5-1457

Counselor, Los Angeles County District

Council of Carpenters

July 7, 1955

Mr. Herman Marx, Trial Examiner

National Labor Relations Board

630 Sansome Street

San Francisco, California

Re: W. B. Jones and Don F. Tooze, Cases Nos.
21-CA-2116; 21-CA-671

Dear Sir:

Referring to a document which we received in the mail from you yesterday entitled Order to Show Cause with respect to correcting the transcript of the testimony of Richard Smith, it is the position of the respondent union that the Trial Examiner has no authority to take any action in the correction of the transcript since his province is to conduct the hearing and make findings upon the transcript as made. He is not a party to the proceeding and has no right to make any change in any transcript.

In the absence of any motion of any of the parties or a stipulation of the parties for the purpose of correcting the transcript, we object and protest the issuance of the Order to Show Cause as being

improvidential and that the Order to Show Cause should be withdrawn.

Very truly yours,

ARTHUR GARRETT and
JAMES M. NICOSON,

/s/ By ARTHUR GARRETT,
Attorneys for Respondent

AG:meh

cc: Paul A. Weil, Counsel for the General Counsel,
National Labor Relations Board, 111 West Sev-
enth St., Los Angeles 14, California
John M. McCormick, Esq., 417 South Hill
Street, Los Angeles 13, California

[Title of Board and Causes.]

RETURN AND ANSWER TO ORDER TO
SHOW CAUSE AND ARGUMENT IN
SUPPORT OF THE ORDER

Comes now Paul E. Weil, Counsel for the General Counsel, in the above proceeding, in response to an Order to Show Cause why the transcript of testimony of the witness Richard Smith, given in said proceeding, should not be corrected by substituting the figures \$324,015.68 for the figures \$32,415.68 at line 3, page 293 of the said transcript and argues as follows:

The testimony of witness Richard Smith, starting on line 3, page 290 of transcript, shows on line 22, page 291 that the witness prepared a summary

which was marked for identification as General Counsel's Exhibit No. 33 (page 292, line 3) from which he testified to the total of the sums of the invoices (page 293, line 3) and which was offered as General Counsel's Exhibit No. 33 (page 293, line 19) and excluded by the Trial Examiner (page 293, line 25). Subsequently, the rejected General Counsel's Exhibit No. 33 was ordered placed in the rejected Exhibit file by the Trial Examiner (page 300, line 11).

The witness Richard Smith has made his affidavit, offered herewith, to the effect that he testified from that document (rejected G.C. 33) that the office copy of the document from which he testified shows the figure with which the Order to Show Cause is concerned to be \$324,015.68, and that that is the correct amount of Mississippi Glass Company's sales as evidenced by the invoices summarized in the document from which he testified.

The rejected Exhibit file which is presently in the hands of the Trial Examiner will show the correct figure of \$324,015.68.

It may be pointed further that the reason given by the Trial Examiner for rejecting General Counsel's Exhibit No. 33 for identification is that "His evidence is in as to that amount" (page 293, line 25).

Conclusion

The undersigned Counsel for the General Counsel requests that the Trial Examiner order that the transcript be corrected by substituting the figures

\$324,015.68 for the figures \$32,415.68 at line 3, page 293, of the said transcript.

Alternatively, it is requested that the Trial Examiner withdraw his ruling excluding General Counsel's Exhibit No. 33 for identification and admit said Exhibit for the reason that the transcript of the witness's testimony does not correctly reflect the evidence as to the amount given by the witness.

Dated at Los Angeles, California, this 7th day of July, 1955.

Respectfully submitted,

/s/ PAUL E. WEIL,

Counsel for the General Counsel,
National Labor Relations Board

AFFIDAVIT

State of California,

County of Los Angeles—ss.

I, Richard Smith, being first duly sworn on my oath, depose and say:

I am that same Richard Smith who testified in the matter of W. B. Jones Lumber Company, Inc., et al. and Don F. Tooze, Case No. 21-CA-2116, et al., on May 26, 1955, at Los Angeles, California. At the time of my testimony I testified from a copy of a summary of the Company's business which is kept on file in our office. The copy from which I testified was offered in evidence and was not received. I have no present recollection of the exact amount to which I testified in answer to the question by Mr. Weil: "Will you tell me the total of the

sums of the invoices?" but I recall that I testified to the amount which appeared on the summary which I consulted at that time.

I have checked the office copy of the summary to which I referred in my testimony and I find thereon that the figure to which I testified is \$324,015.68. That is the correct amount of our sales as evidenced by the invoices summarized in the document from which I testified.

I have read the foregoing affidavit, and to the best of my knowledge it is true and correct.

/s/ RICHARD SMITH

Sworn and Subscribed to before me this 7th day of July, 1955.

/s/ PAUL E. WEIL,

Attorney,

National Labor Relations Board

[Title of Board and Causes.]

INTERMEDIATE REPORT AND RECOMMENDED ORDER

Mr. Paul E. Weil, of Los Angeles, Calif., for the General Counsel. Mr. John Michael McCormick, of Los Angeles, Calif., for the Company. Messrs. James M. Nicoson, Arthur Garrett, and Lewis Garrett, of Los Angeles, Calif., for the Union.

Before: Herman Marx, Trial Examiner.

Statement of the Case

On November 18, 1954, Don F. Tooze filed two charges with the National Labor Relations Board

(also designated herein as the Board), one in Case No. 21-CA-2116 against the Respondent, W. B. Jones Lumber Company, Inc. (also designated herein as the Company), and the other in Case No. 21-CB-671 against the Respondent, Lumber and Sawmill Workers' Union, Local No. 2288, AFL (also referred to herein as the Union or Local 2288). The cases were subsequently consolidated for hearing pursuant to an order entered by the Regional Director of the Twenty-first Region of the Board. On April 21, 1955, the General Counsel of the Board duly issued a complaint based upon the charges, alleging that the Company and the Union had engaged, and were engaging, in unfair labor practices affecting commerce within the meaning of the National Labor Relations Act, as amended (61 Stat. 136-163), referred to herein as the Act. Each of the Respondents has been duly served with copies of the charge filed against it, and of the complaint and the order consolidating the cases.

With respect to the alleged unfair labor practices, the complaint charges, in effect, that on or about November 17, 1954, Local 2288 informed the Company that Tooze was not a member of the Union in good standing and demanded that he be discharged for reasons other than a failure to pay dues and initiation fees uniformly required by Local 2288 of its members; that the Company discharged Tooze on or about November 17, 1954, in compliance with the demand; that on or about the said date, and thereafter, the Union refused to give Tooze "clearance" for employment with the

Company although he “offered to pay and tendered initiation fees uniformly required of union members”; that on or about November 19, 1954, the Company failed and refused to reinstate Tooze unless he presented to the Company “written clearance from Respondent Union or an order from the National Labor Relations Board that he should be reinstated”; that the conduct attributed to the Company, as described above, violated Sections 8 (a) (1) and 8 (a) (3) of the Act; and that the Union by its conduct set out above violated Sections 8 (b) (1) (A) and 8 (b) (2) of the said Act.

The Company and the Union filed separate answers. That of the Company in effect denies the commission of the acts attributed to it in the complaint and, as a separate defense, alleges that Tooze was a satisfactory employee; that on or about November 17, 1954, the Union informed it that Tooze was no longer a member of the organization in good standing and ineligible for employment with the Company; that the Union “ordered” the Company to discharge Tooze, stating that unless he was dismissed, the organization would cause a picket line to be placed at the Company’s premises; that the Company discharged Tooze “to avoid this eventuality” and because Tooze was no longer a member of the Union in good standing; and that the Company “has been ready and willing to reinstate” Tooze to its employ. The Union’s answer, in material substance, denies the commission of the unlawful conduct imputed to Local 2288 in the complaint, and affirmatively alleges that the Board is without ju-

risdiction over this proceeding because the Company "is not engaged in a business affecting commerce."

Pursuant to notice duly served upon all parties, a hearing was held before me, as duly designated Trial Examiner, on May 9, 10, 25, 26 and 27, 1955, at Los Angeles, California. The General Counsel, the Union, and the Company were each represented by counsel and participated in the hearing. All parties were afforded a full opportunity to be heard, examine and cross-examine witnesses, adduce evidence, submit oral argument and file briefs. After the close of the evidence the Company and the Union moved to dismiss the complaint. Decision was reserved on the motions. They are hereby denied upon the basis of the applicable findings and conclusions set out below. The Union has filed a brief which has been read and considered. The other parties have not filed briefs.

Upon the entire record in the case, and from my observation of the witnesses, I make the following:

Findings of Fact

I. Jurisdiction

The Respondent is a California corporation. It operates a lumber yard in the City of Los Angeles, California, where it is engaged in the business of selling lumber at retail and wholesale. The Company employs between 15 and 35 persons, the number varying with fluctuations in its volume of business.

In 1954, all of the goods sold by the Respondent were delivered by it to customers in California, with the exception of products valued at \$34,260.71, which were shipped from the Company's place of business to points in Nevada. These direct interstate shipments, standing alone, are insufficient for the assertion of jurisdiction under criteria promulgated by the Board in Jonesboro Grain Drying Cooperative, 110 NLRB No. 67. The evidence, however, presents another basis for the assertion of jurisdiction under standards established by the Jonesboro case. During the calendar year 1954, the Company sold and delivered products valued in the aggregate in excess of \$200,000 to the concerns listed below, each of whom, during the said year, shipped goods valued in excess of \$50,000,¹ from

¹ Richard Smith, office manager of Mississippi Glass Company, one of the Respondent Company's customers, testified to the value of his firm's interstate shipments in 1954, as totalled from the concern's invoices. The transcript of his testimony reflects him as testifying that the value was \$32,415.68. These figures do not correspond to notes I made while Smith testified. According to my notes, Smith testified that the value was \$324,015.68. After Smith stated the figures, the General Counsel offered a tabulated summary, prepared by Smith, of his firm's interstate shipments in 1954 and of the value of the products so shipped. The proffered exhibit was identified as G. C. Exh. 33. The exhibit specified the sum of \$324,015.68 as the total value of the shipments. Upon the Union's objection, the exhibit was rejected. On July 5, 1955, I issued an order requiring the parties to show cause on July 11, 1955 why the transcript should not be corrected. A copy of the Order to Show Cause was duly served

points within the state of California to places in

upon each of the parties. The Company has made no return to the Order to Show Cause. The Union made no formal return, but, through its counsel, has addressed a letter to me, dated July 7, 1955, taking the position in effect that a Trial Examiner has no authority to correct a transcript, and that in the absence of any motion by the parties or a stipulation for the correction of the transcript, the "Order to Show Cause is improvidential * * * and should be withdrawn." The Union's position is without merit. Section 102.35 of the Board's Rules and Regulations imposes the duty upon a Trial Examiner assigned to the hearing of a case "to inquire fully into the facts," and, among other things, empowers him to "dispose of procedural requests or similar matters"; to "call, examine and cross-examine witnesses, and to introduce into the record documentary and other evidence"; and "to take any other action necessary under the foregoing and authorized by the published Rules and Regulations." It may be noted that the Union's letter advances no claim that the transcript accurately reflects Smith's testimony. The General Counsel has filed a return, requesting that the transcript be corrected by substituting the figures \$324,015.68 for the figures \$32,415.68 in Smith's testimony or, in the alternative, that the ruling rejecting G. C. Exh. 33 be withdrawn and that the exhibit be received in evidence. Appended to the General Counsel's return is an affidavit by Smith to the effect that he has no "present recollection of the exact amount" to which he testified, but that he testified to the amount which appears in the summary (G. C. Exh. 33) which he prepared, and that the sum of \$324,015.68 which appears therein is the "correct amount" of the "sales as evidenced by the invoices summarized in the document." There is no doubt that the transcript inaccurately quotes Smith with respect to the figures he gave. Accordingly, the transcript is hereby corrected by deleting the figures \$32,415.68

other states.² The following tabulation sets forth

in Smith's testimony at line 3, page 293, of the transcript and substituting therefor the figures \$324,015.68. The Order to Show Cause, the letter dated July 7, 1955, from counsel for the Union, the General Counsel's return and Smith's affidavit are hereby made part of the record. The General Counsel's application that the ruling rejecting G. C. Exh. 33 be withdrawn is denied. However, as Smith's affidavit refers to the exhibit, and since both should be read together for purposes of clarity, I hereby grant the General Counsel's request that the exhibit be received in evidence, but it is received for the single purpose of serving as an explanatory supplement to Smith's affidavit.

² In its brief, the Union contends that the testimony of various witnesses relating to the dollar volume of interstate shipments of a number of the customers should be disregarded as non-probative. In support of its position, the Union cites *N. L. R. B. v. Haddock-Engineers, Ltd.*, 215 F. 2d 734 (C. A. 9). The contention in effect reiterates objections made by the Union at the hearing to testimony given by a number of the witnesses. Each of the witnesses upon whose testimony findings concerning interstate shipments are based holds either a supervisory, administrative or fiscal position with the customer concerning whose shipments he testified. It would be an idle act to determine what portions, if any, of the testimony would be non-probative in a proceeding arising under another law, for the Act contains its own evidentiary guide. Section 10 (b) of the Act provides that unfair labor practice proceedings "shall, so far as practicable, be conducted in accordance with the rules of evidence applicable to the district courts of the United States * * *" (emphasis supplied). Thus, by the very terms of the Act, adherence to evidentiary rules is not always required. *N. L. R. B. v. Hunter*

the names of the Company's customers mentioned above,³ and the value of the products sold to each by the Company in 1954:

Sprague Engineering Corporation	\$ 9,069.13
Johnston Pump Company.....	8,197.70
Stauffer Chemical Company.....	10,220.85
Wolf Range & Manufacturing Company	6,803.33
Mission Appliance Company.....	14,415.13

Engineering Co., 215 F. 2d 916 (C. A. 8); *N. L. R. B. v. Local 1418*, etc., 212 F. 2d 846 (C.A. 5). Plainly, this is true where it would be impracticable to adhere to them. As the record sufficiently reflects the objections, the underlying reasons for the rulings, and the testimony given, it is unnecessary here to collect and analyse the many variable situations involved. Suffice it to say, that upon foundations reflected in the record, the terms of Section 10 (b) warranted the admission of the testimony in the form given. The Union apparently misreads the *Haddock* case in seeking to apply it here. Substantially, the evidentiary point at issue there was whether a written admission bearing on commerce facts, made by a respondent employer, was binding upon a respondent union. The phrase "so far as practicable," as used in Section 10 (b), was not involved in the case, and the Court had no occasion either to apply or construe it. In short, the *Haddock* case is inapposite.

³ The record contains evidence pertaining to sales made by the Company to other customers, and to the volume of their business. It is unnecessary to set out details of such evidence, inasmuch as the Company's sales to, and the interstate shipments made by, the customers listed in the tabulation, without reference to any others, satisfy criteria for the assertion of jurisdiction described in the *Jonesboro* case.

Hammond Manufacturing	
Company	18,662.20
Mississippi Glass Company.....	30,028.40
Southern Heater Corporation.....	8,274.67
C. & M. Manufacturing Company..	26,734.94
Docummon Metals & Supply	
Company	19,705.88
National Supply Company.....	20,801.55
Columbia Pictures Corporation...	11,531.97
Chrysler Corporation	8,010.35
Phelps Dodge Copper Products	
Corporation	4,192.64
Morris D. Kirk & Sons, Inc.....	14,263.83
Total.....	<u>\$210,912.57</u>

I find that the Company's operations affect interstate commerce within the meaning of the Act, that the Board has jurisdiction over this proceeding, and that the assertion of jurisdiction herein will effectuate the policies of the Act.

II. The labor organization involved

The Union admits persons employed by the Company to membership and is a labor organization within the meaning of the Act.

III. The alleged unfair labor practices

A. Prefatory findings

The president of the Company is named William B. Jones. He supervises the firm's operations. One of his managerial subordinates is the yard superintendent, Alex Hardy. Hardy directs the work of employees in the lumber yard and is vested with

authority to hire and discharge employees subject to his supervision. Both Jones and Hardy are supervisors within the meaning of the Act.

Local 2288 has collective bargaining relations with a group of lumber concerns described by Jones in his testimony as "the big five." The Union and the group customarily negotiate collective bargaining agreements. The Company is not a member of the negotiating group, but adopts and follows whatever contract provisions result from the negotiations. The evidence does not specify what form such adoption takes, nor does it describe the provisions of any collective bargaining contract. There is thus no proof that at any time relevant to this proceeding the Company was a party to a valid union security agreement requiring membership in Local 2288 as a condition of employment.

During the early part of 1954, Don F. Tooze was in the employ of a concern in Oakridge, Oregon. While so employed, he was a member of a labor organization described in the record (G. C. Exh. 5) as United Brotherhood of Carpenters and Joiners, Union No. 2453 (also referred to herein as Local 2453). The record suggests that Local 2453 is affiliated with an organization known as the Willamette Valley District Council (described below as the Council), and that the latter exercises disciplinary powers over members of Local 2453.

In March 1954, the Council brought a disciplinary proceeding against Tooze before one of its committees upon charges of what is commonly called dual unionism. As a result of the proceeding, he

was "placed on probation" for three years, and subjected to various disabilities, including ineligibility "for a withdrawal card or clearance card for a period of three years." The terms of his probation required him to "pay dues regularly and remain in good standing," and provided that upon violation of such terms, he be "forever debarred from membership and all rights and benefits of the United Brotherhood of Carpenters and Joiners of America."

Tooze left his employment in Oakridge in April 1954. He thereafter held a miscellany of jobs in Oregon for brief periods and then came to Southern California. In June 1954, he fell into arrears in the monthly dues payments required by Local 2453 of its members, and as of November 1954, his arrearages totalled \$17.25.

Tooze entered the Company's employ as a fork-lift operator on October 28, 1954. He was hired by Superintendent Hardy and thereafter worked under the latter's supervision in the Company's lumber yard. When he was hired, Tooze was not a member of Local 2288, nor has he since secured membership.

A business representative of Local 2288 frequently visits the Company's lumber yard for such purposes as ascertaining whether any new men had been employed, whether these were members of Local 2288, and whether employees were in arrears in their dues. For some four years prior to Tooze's employment by the Company, the representative of Local 2288 who performed these functions was a man named John Matzko. It was Matzko's practice

to come to the yard each week, usually on Wednesday, and discuss matters related to the union membership status of employees, customarily transacting his business with Hardy.

On November 3, 1954 Matzko came to the yard and introduced himself to Tooze as a representative of Local 2288. Apparently proceeding on the assumption that Matzko wished to look into his union membership status, Tooze told the union representative about the charges brought against him in Oregon and that he had been "found guilty" of them. After some discussion of the charges, Matzko said that he would write to Local 2453 or the Council about the matter, and that he would "have to pull (Tooze) off the job," if what Tooze had told him turned out to be accurate.

Later that day, Tooze went to the office of Local 2288 and spoke to another of its representatives, a man named Knight. Tooze gave Knight the same account of the disciplinary proceeding as he had given Matzko, stating, also, that he had "never received any official notice" that he had been found guilty of the charges or of any penalties imposed upon him. Matzko came into the office during the conversation. Knight told Matzko to give Tooze a work permit for December, and informed Tooze that he would write to Local 2453 to "find out just what the situation was." Matzko told Tooze to return at a later date for the work permit.

Tooze continued to work for the Company after his conversation with Knight. On or about November 12, 1954, he called at the union office for the

purpose of securing the work permit.⁴ He was accompanied by another employee of the Company, named Robert Oyster, who had also recently been hired and desired a work permit. Matzko was present during the conversation that ensued between Knight and Tooze. Knight declined to issue the work permit to Tooze, telling the latter: "We couldn't do much for you, Tooze. You are not a member in good standing." Knight showed Tooze three documents. One of these was a letter dated November 12, 1954, addressed to Knight by Local 2453, describing Tooze's dues arrearages. Another was a letter dated November 8, 1954, addressed to Knight by the Council. This letter describes Tooze as "a perpetual trouble maker so far as our organization is concerned," and summarizes the charges against Tooze and the results of the disciplinary proceeding. The third document purports to contain an excerpt from the minutes of a meeting of the Executive Committee of the Council, setting forth the report of the Trial Committee which had heard the charges against Tooze. Tooze read the documents and made an offer to Knight to pay the dues owed to Local 2453, and "to join the union over

⁴Tooze estimated that this visit was on the Friday of the week following the one in which the first conversation occurred. According to this estimate, the date of the second visit would be November 12, 1954. However, since on this occasion, Knight showed him a letter from Local 2453 bearing that date, it is not unlikely that the second visit took place somewhat later than Tooze's estimate indicates. In any event, the precise date does not affect the concluding findings reached below.

again." Knight rejected the offer, telling Tooze that he "couldn't become a member twice." Tooze asked, "Doesn't the Taft-Hartley Law protect me?" Knight walked away, saying "Don't talk Taft-Hartley Law to me." That ended the conversation. Unlike Tooze, Oyster was given a work permit.

Matzko spoke to Tooze on November 17, while the latter was at work in the Company's yard. The Union's agent said that he was "going to have to pull (Tooze) off the job" and would talk to Jones about the matter. Tooze then sought out Hardy and, in Matzko's presence, told the superintendent that Local 2288 "was pulling (him) off the job." Hardy asked Matzko for the reason, and the latter replied that Tooze was not a member of Local 2288. Hardy also inquired of Matzko whether Tooze could complete the day's work. The union representative responded that Tooze would "have to leave right then." Hardy complained that he would have to pay Tooze for a full day's work, and Matzko stated that that would not be necessary. During the course of the conversation Hardy asked Matzko what would happen if Tooze were retained, and Matzko stated that Local 2288 would "put a picket line around the yard." The upshot of the discussion was that Hardy acquiesced in Matzko's demand and discharged Tooze.⁵

⁵ Hardy and Tooze gave somewhat differing versions of the conversation between the former and Matzko. The versions are not significantly dissimilar, and I have based findings on a composite of both. It may be noted that, whatever the differ-

On the following day, Tooze telephoned Hardy and asked the superintendent if Jones would reinstate him in the event that he "got squared away with the union." Hardy replied, "Yes, Don, get something in writing either from the union or from the National Labor Relations Board and come back to work." Hardy also assured Tooze that he had not been discharged for "any infraction of the rules," and that all that the Company wanted was the "writing" mentioned above.

Tooze came to the yard the following morning (on November 19) and told Hardy that he was ready to report for work. The superintendent inquired whether Tooze "had anything in writing from the union or the National Labor Relations Board." Tooze replied in the negative, but produced a copy of the Act and offered it to Hardy to read. The superintendent declined to read it. The conversation ended with a statement by Tooze to the effect that there was a possibility that he would file a charge against the Company with the Board.

On one occasion or another (the record does not specify the date), Hardy told Jones that Tooze "was a good man he (Hardy) wanted to keep." Jones expressed a wish to see Tooze "to see if we can get it straightened out," and when Tooze came to the Company's office on or about November 24 to pick up his pay check, Hardy took him to see Jones.

ences, both accounts are in substantial accord that Matzko demanded that the Company discharge Tooze because he was not a member of Local 2288, and that the Company complied with the demand.

During the course of the conversation that followed, Jones in effect expressed a willingness to re-employ Tooze and advised the latter to pay whatever dues he owed and to eliminate his difficulties with Local 2288. Tooze informed Jones that he had already offered to pay the dues arrearages, and that he would follow Jones' suggestion.⁶

Tooze left Jones and proceeded directly to the Union's office. He asked an office employee there if he could see Knight and was informed that the latter was indisposed. Tooze then told the employee that he had come to pay his "back dues," but she stated that she could not accept them. At this point Knight emerged from his office and approached the others. Tooze told the office employee that he "wanted to join the union over again." Knight interposed and said that Tooze was "already a member of the union" and "couldn't become a union

⁶ Tooze and Jones were in substantial accord in their testimony concerning the features of the conversation described above. There are some variances between them concerning other aspects of the meeting, relating principally to whether Jones read the documents Matzko had previously given Tooze. (It is undisputed that Tooze handed the papers to Jones.) The differences need not be resolved. A resolution would not affect the conclusions reached below since Tooze had already been discharged and, in effect, denied unconditional reinstatement by Hardy on two occasions some days earlier. It is evident that a determination that during the conversation Jones read the papers or was familiarized with Tooze's difficulties in Oregon would not affect whatever liabilities had already been incurred by the company.

member twice." Tooze protested that "the constitution and bylaws" did not preclude acceptance of his offer, to which Knight replied that Tooze was "already a member of the union but * * * (had) no withdrawal card," and that Local 2288 could not accept dues owed by Tooze to "another union." In addition to his offer to pay the dues he owed Local 2453, Tooze sought to join Local 2288, for he made an offer to Knight to pay the initiation fee and two months' dues in advance required by the Union of new members, but Knight rejected the offer. At the time he made this offer, Tooze had "far more" money in his hand than the amount he owed Local 2453. (In his undisputed account of the conversation, Tooze did not specify how much he had in his hand.) Knight also told Tooze that the latter "should have gotten in touch" with him before Tooze filed an unfair labor practice charge against Local 2288. With that the conversation ended and Tooze left the office.⁷

B. Concluding findings

As a preface to the conclusions to be drawn from the evidence, it is appropriate to sift out and dis-

⁷ Jones gave undisputed testimony to the effect that either while Tooze was in his office or shortly before, he (Jones) spoke to Knight on the telephone, and that the latter agreed that all Tooze had "to do is pay those back dues" in order to return to work. It is evident that Knight changed his mind at one point or another. Since it would not affect the concluding findings set out below, it need not be determined whether the filing of the charge against the Union with the Board was a factor in Knight's rejection of any of Tooze's offers.

pose of a number of features of the record which do not materially affect the results required by the operative facts in this proceeding.

First, the fact that Matzko threatened to place a picket line at the Company's yard if Tooze were not discharged has no bearing on the Company's liability for the discharge. The Company may not legally justify the dismissal on the ground that it feared reprisal at the Union's hands if it did not comply with Matzko's demand. *N. L. R. B. v. Fry Roofing Co.*, 193 F. 2d 324 (C. A. 9), and cases cited.

Second, the offers to re-employ Tooze, whether made by Hardy or Jones, do not in any way diminish the Company's liability for any discrimination it practiced against Tooze. The offers of reinstatement were not unconditional, but, on the contrary, were coupled in practical effect, if not in precise terms, with the condition that he secure the sanction of the Union for his reinstatement or, as an alternative (voiced by Hardy) an order from the Board directing the reinstatement. Because of the conditions, the offers were actually tantamount to unlawful denials of reinstatement.

Third, in its brief, Local 2288 deals at some length with the disciplinary proceeding against Tooze in Oregon, his dues arrearages there, and the right of Local 2288 to refuse to accept the dues Tooze owed to another union.⁸ But what the brief does not make clear is how all this endowed Local

⁸ The claim is also made in the Union's brief that Tooze "had been expelled from the union" because of his dues delinquency. The brief does not make

2288 with any legal right to demand that the Company discharge Tooze. It is well settled that a labor organization may validly cause an employer to discharge an employee because of nonmembership in the union only if the dismissal is authorized by an applicable agreement, valid under Section 8 (a) (3) of the Act, making membership in the labor organization a condition of employment. *Radio Officers' Union v. N.L.R.B.*, 347 U. S. 17. The burden of justifying the discharge as a lawful application of a valid union security agreement is upon the Respondents. *Construction and General Laborers Union, Local 320*, 96 NLRB 118, 119. Neither Respondent presented evidence of such an agreement, and neither relies upon one to justify the discharge. It is evident that none exists.⁹ The nub of the mat-

clear at the point in question whether the "union" referred to is Local 2453 or United Brotherhood of Carpenters and Joiners of America. Actually, there is no evidence that Tooze had in fact been expelled from either, but, in any event, as will appear, whether such expulsion took place does not affect any issue in this proceeding.

⁹ Even if a valid union shop agreement between the Company and Local 2288 had been in existence, the discharge, and the Union's role in it, would have been unlawful. Where an applicable valid union security agreement exists, Section 8 (a) (3) immunizes an employee from discharge, because of nonmembership in the contracting union, for a period of 30 days from the commencement of his employment. Tooze was discharged within the 30-day period. Thus, putting aside the plain fact that Local 2288 barred Tooze from membership, the existence of a valid union shop agreement would not have the effect of validating either the discharge or the Union's demand for the dismissal.

ter is that Tooze's difficulties in Oregon, his dues arrearages there, and the right of Local 2288 to refuse to accept payment of such dues, afford no absolution for the Union's conduct in seeking Tooze's discharge.

Fourth, in oral argument at the hearing the Company took the position that the discharge did not violate the Act because the only reason given by Matzko was that Tooze "had not paid his dues." This view of the reason is not quite accurate, for the reason given by Matzko to Hardy, according to the latter's testimony, was that "Tooze was not in the union and could not work." Be that as it may, what the Company's version of the reason implies is that the Union had an unrevealed motive for demanding the discharge, namely, that Tooze was *persona non grata* to Local 2288 because of his union difficulties in Oregon. In an effort to absolve itself of liability, the Company harnesses its conception of what Matzko told Hardy to certain language of Section 8 (a) (3). That section contains three provisos which follow the language prohibiting discrimination. The first in effect carves out an exception validating discrimination based upon the application of a lawful union security agreement. The remaining provisos read: "Provided further, that no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has

reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership." It is unnecessary to speculate whether Hardy believed that Tooze was "not in the union" because of a failure by him to pay dues to that organization or for some other reason, nor is it necessary to determine whether the Company should have gone farther than it did in inquiring into the Union's motive and whether it had good reason to conclude that all that was behind the organization's attitude toward Tooze was a mere failure by him to pay "periodic dues" to Local 2288. The decisive point is that the provisos are inapplicable to the facts in this proceeding. The quoted language, as the Board has held, "spell(s) out two separate and distinct limitations on the use of the type of union security agreements permitted by the Act" (Union Starch and Refining Company, 87 NLRB 779, 783, enforced 186 F. 2d 1008 (C. A. 7)). The Company does not rely upon a valid union security agreement to justify the discharge. Hence, the provisos have no bearing on any issue in this case, and afford no defense to the Company.¹⁰

¹⁰ I deem it unnecessary to make findings concerning the Union's real motive for raising barriers to Tooze's employment. It is enough that the reason given Hardy by Matzko was that Tooze was not a member of the Union, that the Company based its dismissal on that reason (as the Company's answer in effect concedes), and that the discharge was not

The operative facts bearing on the question of the legality of the discharge are clear. The sum of the matter is that on November 17, 1954, the Union demanded of the Company that Tooze be discharged on the ground that he was not a member of Local 2288;¹¹ that the Company complied with the demand, and discharged Tooze on November 17, 1954 because he was not a member of the Union; that the discharge was not authorized by the terms of a valid union security agreement; that the Company because of the Union's demand, described above, has since refused to give Tooze unconditional reinstatement to his position; that by discharging Tooze and refusing to reinstate him, the Company discrimi-

grounded upon the application of a valid union security agreement. In that posture of the evidence, whatever hidden motives the Union had for its conduct cannot affect the Company's responsibility for the discrimination it practiced against Tooze. Construction and General Laborers Union, Local 320, 96 NLRB 118, 119.

¹¹ The Union takes the position in its brief "that there is no proof that Matzko held any representative capacity with the Respondent Union to bind it by his actions." The contention lacks merit. On that score, one may note Superintendent Hardy's account of his dealings with Matzko over a period of some four years prior to Tooze's dismissal, and the undisputed evidence of Tooze's conversations with Knight and Matzko in the Union's office. In short, there is ample evidence that Matzko's demand for Tooze's discharge was at least within the apparent scope of the authority vested by the Union in Matzko. Such apparent authority is enough to bind the Union. See Restatement, Agency, Secs. 219, 228, 233-237; Acme Mattress Co., 91 NLRB 1010, enforced 192 F. 2d 524 (C. A. 7).

nated against him and violated Sections 8 (a) (1) and 8 (a) (3) of the Act; that, as a result of its demand, the Union caused the Company to discriminate against Tooze in violation of Section 8 (a) (3) of the Act; and that the Union thereby violated Sections 8 (b) (1) (A) and 8 (b) (2) of the Act.

The complaint alleges as separate violations of Sections 8 (b) (1) (A) and 8 (b) (2), respectively, that the Union "failed and refused to give * * * Tooze clearance" for employment with the Company. The allegation is amply supported by the evidence. It is clear that Local 2288 arrogated to itself the right to determine whether the Company could employ Tooze. The Union in effect informed Tooze as early as November 3, 1954 of its power to veto his employment when Matzko told the former that he would "have to pull (him) off the job," if Tooze's description of his difficulties in Oregon turned out to be true. Plainly, at least from the time Matzko spoke to Tooze on that date, the latter believed that he would not be able to work for the Company without the sanction of Local 2288. (The fact that Tooze was discharged on November 17 is ample evidence that the belief was justified). Tooze sought that sanction, in effect, when he requested Knight, on or about November 12, 1954, to give him a work permit, and when he offered on or about November 24, 1954, to pay Knight the dues and initiation fees required by Local 2288 of new members or, in other words, to join Local 2288. Knight's refusal to issue the permit and his rejection of Tooze's offer to join Local 2288 were in effect a de-

nial by the Union of its sanction for Tooze's employment by the Company. The natural tendency of the Union's conduct in the premises was to restrain and coerce employees in the exercise of guarantees accorded them by Section 7 of the Act. Moreover, in the light of the evidence as a whole, such conduct was tantamount to an attempt to cause the Company to discriminate against Tooze in violation of Section 8 (a) (3). Accordingly, the refusal by the Union, on or about November 12 and 24, 1954, as found above, to give its sanction for Tooze's employment violated Sections 8 (b) (1) (A) and 8 (b) (2) of the Act.¹²

IV. The effect of the unfair labor practices upon commerce

The respective activities of the Respondents set forth in Section III, above, occurring in connection with the operations of the Company, described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states and tend to lead to labor

¹² Section 8 (b) (1) (A), forbidding restraint and coercion of employees by labor organizations, contains a proviso that "this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein." The finding made above does not impair that right, since the quoted proviso does not excuse practices which, as in this case, are used by a union as instruments to effect unlawful discrimination in employment. *Utah Construction Co.*, 95 NLRB 196, 206, n. 25; *Local 153, UAW, CIO*, 99 NLRB 1419, 1421.

disputes burdening and obstructing commerce and the free flow of commerce.

V. The remedy

It has been found that the Company has engaged in unfair labor practices violative of Sections 8 (a) (1) and 8 (a) (3) of the Act, and that the Union has engaged in unfair labor practices in violation of Sections 8 (b) (1) (A) and 8 (b) (2) of the said statute. In view of the findings, I shall recommend that the Respondents cease and desist from their respective unfair labor practices and take certain affirmative action designed to effectuate the policies of the Act.

As it has been found that the Company discharged Don F. Tooze on November 17, 1954, and subsequently refused to reinstate him, that such discharge and refusals to reinstate violated Section 8 (a) (3) of the Act, and that the Union caused the Company to discharge Don F. Tooze and to refuse to reinstate him in violation of Section 8 (a) (3) I shall recommend that the Company offer Don F. Tooze immediate and full reinstatement to his former or a substantially equivalent position,¹³ without prejudice to his seniority and other rights and

¹³ In accordance with the Board's past interpretation, the expression "former or substantially equivalent position" is intended to mean "former position wherever possible, but if such position is no longer in existence, then to a substantially equivalent position." See *The Chase National Bank of the City of New York, San Juan, Puerto Rico Branch*, 65 NLRB 827.

privileges, and that the Company and the Union jointly and severally make the said Don F. Tooze whole for any loss of pay he may have suffered by reason of the Company's discrimination against him, by payment to him of a sum of money equal to the amount of wages he would have earned, but for his discharge, between November 17, 1954 and the date of a proper offer of reinstatement to him as aforesaid. Loss of pay shall be computed on the basis of each separate calendar quarter or portion thereof during the period from the date of the discharge to the date of a proper offer of reinstatement. The quarterly periods shall begin with the respective first days of January, April, July, and October. Loss of pay shall be determined by deducting from a sum equal to that which Don F. Tooze normally would have earned, but for the discrimination, in each such quarter or portion thereof, his net earnings,¹⁴ if any, in any other employment during that period. Earnings in one quarter shall have no effect upon the back pay liability for any other quarter. Both the Company and the Union will be required, upon reasonable request, to make available to the Board and its agents all records pertinent to an analysis of the amount due as back pay and to the order for reinstatement.

As it has been found that the Company, in violation of Section 8 (a) (1) of the Act, has interfered with, restrained, and coerced employees in the exercise by them of rights guaranteed by Section 7 of

¹⁴ See *Crossett Lumber Company*, 8 NLRB 440, for the applicable construction of "net earnings."

the said statute, and that the Union, in violation of Section 8 (b) (1) (A), has restrained and coerced employees in the exercise of such rights, I shall recommend that the Company and the Union be directed to cease and desist in the future from committing their said respective violations of the Act.

Upon the basis of the foregoing findings of fact and of the entire record in this proceeding, I make the following:

Conclusions of Law

1. Lumber and Sawmill Workers' Union, Local No. 2288, AFL, is, and has been at all times material to this proceeding, a labor organization within the meaning of Section 2 (5) of the Act.

2. W. B. Jones Lumber Company, Inc. is, and at all times material to this proceeding has been, an employer within the meaning of Section 2 (2) of the Act.

3. By discriminating in regard to the hire and tenure of employment of Don F. Tooze the Company has engaged in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

4. By interfering with, and restraining and coercing employees in the exercise of rights guaranteed to them by Section 7 of the Act, the Company has engaged in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

5. By attempting to cause, and by causing, the Company to discriminate in regard to the hire and tenure of employment of Don F. Tooze in violation of Section 8 (a) (3), the Union has engaged in un-

fair labor practices within the meaning of Section 8 (b) (2) of the Act.

6. By restraining and coercing persons employed by the Company in the exercise of rights guaranteed to them by Section 7 of the Act, the Union has engaged in unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Sections 2 (6) and 2 (7) of the Act.

Recommendations

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in this proceeding, I recommend that:

1. W. B. Jones Lumber Company, Inc., its officers, agents, successors, and assigns, shall:

(1) Cease and desist from:

(a) Encouraging membership of its employees in Lumber and Sawmill Workers' Union, Local 2288, AFL, or any other labor organization, or discouraging membership in any labor organization, by discriminatorily discharging its employees or in any other manner discriminating against them in regard to their hire, tenure or any other term or condition of employment, except as authorized by Section 8 (a) (3) of the Act;

(b) In any like or similar manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choos-

ing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

(2) Take the following affirmative action which I find will effectuate the policies of the Act:

(a) Offer to Don F. Tooze immediate and full reinstatement to his former, or a substantially equivalent, position, without prejudice to his seniority and other rights and privileges, and jointly and severally with Lumber and Sawmill Workers' Union, Local 2288, AFL, make him whole in the manner and according to the method set forth in Section V, above, entitled "The remedy";

(b) Post in conspicuous places, including places where notices to employees are customarily posted, at its principal place of business in Los Angeles, California, copies of the notice attached hereto and marked Appendix A. Copies of said notice, to be furnished by the Regional Director for the Twenty-first Region of the Board shall, after being signed by a duly authorized official representative of the Company, be posted by it immediately upon receipt thereof and maintained by it for a period of 60 consecutive days thereafter. Reasonable steps shall be taken by the Company to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the said Regional Director in writing,

within 20 days from the date of the receipt of this Intermediate Report and Recommended Order, what steps the said Company has taken to comply with the foregoing recommendations.

2. Lumber and Sawmill Workers' Union, Local 2288, AFL, its officers, representatives, agents, successors, and assigns, shall:

(1) Cease and desist from:

(a) Causing, or attempting to cause, W. B. Jones Lumber Company, Inc., or any other employer, except as authorized by Section 8 (a) (3) of the Act, to discharge employees or in any other manner discriminate against them in regard to their hire, tenure of employment or any term or condition of employment, because such employees are not members of the Union;

(b) In any like or similar manner restraining or coercing employees of W. B. Jones Lumber Company, Inc., or of any other employer, in the exercise of the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

(2) Take the following affirmative action which I find will effectuate the policies of the Act:

(a) Jointly and severally with W. B. Jones Lum-

ber Company, Inc. make Don F. Tooze whole in the manner and according to the method set forth in Section V, above, entitled "The remedy";

(b) Post in conspicuous places, including places where notices to members are customarily posted, at its office and its usual membership meeting place, copies of the notice attached hereto and marked Appendix B. Copies of said notice, to be furnished by the Regional Director for the Twenty-first Region of the Board, shall, after being duly signed by a duly authorized representative of the said Union, be posted by it immediately upon receipt thereof and maintained by it for a period of 60 consecutive days thereafter. Reasonable steps shall be taken by said Union to insure that said notices are not altered, defaced, or covered by any other material;

(c) Forthwith mail copies of the said notice marked Appendix B to the said Regional Director, after such copies have been signed as provided in Paragraph 2 (2) (b) of these recommendations, for posting at the place of business of the Company, if it so agrees.

(d) Notify the said Regional Director in writing, within 20 days from the date of the receipt of this Intermediate Report and Recommended Order, what steps the said Union has taken to comply with the foregoing recommendations applicable to it.

It is further recommended that, unless or or before 20 days from the receipt of this Intermediate Report and Recommended Order, the Company and the Union notify the said Regional Director in writing that they will comply with the foregoing rec-

ommendations respectively applicable to them, the National Labor Relations Board issue an order requiring the Respondents to take the actions respectively required of them above.

Dated this 18th day of July, 1955.

/s/ HERMAN MARX,
Trial Examiner

APPENDIX A

Notice to All Employees: Pursuant to the Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Not encourage membership by our employees in Lumber and Sawmill Workers' Union, Local No. 2288, AFL, or any other labor organization, or discourage membership in any labor organization, by discriminatorily discharging employees or in any other manner discriminating against them in regard to their hire, tenure of employment, or any term or condition of employment, except as authorized by Section 8 (a) (3) of the National Labor Relations Act.

We Will Not in any like or similar manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the pur-

pose of collective bargaining or other mutual aid or protection, and to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the National Labor Relations Act.

We Will offer Don F. Tooze immediate and full reinstatement to his former, or a substantially equivalent, position without prejudice to his seniority and other rights and privileges.

We Will jointly and severally with Lumber and Sawmill Workers' Union, Local No. 2288, AFL, make Don F. Tooze whole for any loss of pay he suffered as a result of discrimination against him.

All of our employees are free to become, remain, or refrain from becoming, members of any labor organization, except to the extent that this right may be affected by an agreement in conformity with Section 8 (a) (3) of the National Labor Relations Act.

W. B. JONES LUMBER COM-
PANY, INC.
(Employer)

Dated.....

By.....
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

APPENDIX B

Notice to Members of This Union and Employees of W. B. Jones Lumber Company, Inc. Pursuant to the recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby give notice that:

We Will Not cause, or attempt to cause, W. B. Jones Lumber Company, Inc., or any other employer, except in accordance with Section 8 (a) (3) of the National Labor Relations Act, to discharge employees or in any other manner discriminate against them in regard to their hire, tenure of employment, or any term or condition of employment, because such employees are not members of Lumber and Sawmill Workers' Union Local No. 228, AFL.

We Will Not in any like or similar manner restrain or coerce employees of W. B. Jones Lumber Company, Inc., or of any other employer, in the exercise of the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the National Labor Relations Act.

We Will jointly and severally with W. B. Jones Lumber Company, Inc. make Don F. Tooze whole for any loss of pay he suffered as a result of discrimination against him.

LUMBER AND SAWMILL WORK-
ERS' UNION, LOCAL No. 2288,
AFL,
(Labor Organization)

Dated.....

By.....
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Affidavit of Service and Postal Return Receipts Attached.

[Title of Board and Causes.]

RESPONDENT'S EXCEPTIONS TO THE INTERMEDIATE REPORT

Comes now the Respondent, Lumber and Sawmill Workers' Union Local No. 2288, AFL, and files this, its exceptions to certain findings and conclusions of the Trial Examiner made in his Intermediate Report in the above matter, as follows.

I.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate

Report commencing with the word "The" on line 62, page 2 of said Report and ending with the word "case in line 2 of page 3 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

II.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "Richard" in line 8 of page 3 and ending with the word "affidavit" in line 62 of page 3 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

III.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "During" in line 2 of page 3 and ending with the word "states" in line 1 of page 4 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

IV.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "In" in line 24 of page 4 and ending with the word "inapposite"

in line 57 of page 4 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

V.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "It" in line 59 of page 4 and ending with the word "case" in line 64 of page 4 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

VI.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "I" in line 1 of page 5 and ending with the word "Act" in line 4 of page 5 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

VII.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "After" in line 15 of page 6 and ending with the word "accurate" in line 18 of page 6 of said Report for the reason that such findings and conclusions are not sup-

ported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

VIII.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "Later" in line 20 of page 6 and ending with the word "Knight" in line 21 of page 6 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

IX.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "Tooze" in line 21 of page 6 and ending with the word "conversation" in line 25 of page 6 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

X.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "Knight" in line 25 of page 6 and ending with the word "permit" in line 28 of page 6 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record

considered as a whole and are contrary to the law of the case.

XI.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "On" in line 31 of page 6 and ending with the word "permit" in line 32 of page 6 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

XII.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "He" in line 32 of page 6 and ending with the word "permit" in line 34 of page 6 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

XIII.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "Matzko" in line 34 of page 6 and ending with the word "Tooze" in line 35 of page 6 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

XIV.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "Knight" in line 35 of page 6 and ending with the word "standing" in line 37 of page 6 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

XV.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "Knight" in line 37 of page 6 and ending with the word "documents" in line 38 of page 6 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

XVI.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "One" in line 38 of page 6 and ending with the word "proceeding" in line 44 of page 6 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

XVII.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "The" in line 44 of page 6 and ending with the word "again" in line 49 of page 6 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

XVIII.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "Knight" in line 49 of page 6 and ending with the word "conversation" in line 52 of page 6 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the laws of the case.

XIX.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "Unlike" in line 52 of page 6 and ending with the word "permit" in line 53 of page 6 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

XX.

Respondent excepts to the findings and conclu-

sions of the Trial Examiner in his Intermediate Report commencing with the word "Tooze" in line 56 of page 6 and ending with the word "below" in line 62 of page 6 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

XXI.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "Matzko" in line 1 of page 7 and ending with the word "matter" in line 3 of page 7 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

XXII.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "Tooze" in line 4 of page 7 and ending with the word "job" in line 6 of page 7 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

XXIII.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "Hardy" in line

6 of page 7 and ending with the word “necessary” in line 10 of page 7 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

XXIV.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word “During” in line 11 of page 7 and ending with the word “Tooze” in line 14 of page 7 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

XXV.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word “On” in line 16 of page 7 and ending with the word “above” in line 22 of page 7 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

XXVI.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word “Tooze” in line 24 of page 7 and ending with the word “Board” in line 31 of page 7 of said Report for the reason

that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

XXVII.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "On" in line 33 of page 7 and ending with the word "keep" in line 35 of page 7 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

XXVIII.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "Jones" in line 35 of page 7 and ending with the word "Jones" in line 37 of page 7 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

XXIX.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "During" in line 37 of page 7 and ending with the word "suggestion" in line 42 of page 7 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record

considered as a whole and are contrary to the law of the case.

XXX.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "The" in line 46 of page 7 and ending with the word "both" in line 47 of page 7 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

XXXI.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "It" in line 47 of page 7 and ending with the word "demand" in line 51 of page 7 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

XXXII.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "Tooze" in line 52 of page 7 and ending with the word "company" in line 63 of page 7 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

XXXIII.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "Tooze" in line 1 of page 8 and ending with the word "office" in line 1 of page 8 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

XXXIV.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "He" in line 2 of page 8 and ending with the word "indisposed" in line 3 of page 8 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

XXXV.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "Tooze" in line 3 of page 8 and ending with the word "them" in line 5 of page 8 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

XXXVI.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "At" in line 5 of page 8 and ending with the word "union" in line 12 of page 8 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

XXXVII.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "In" in line 12 of page 8 and ending with the word "office" in line 21 of page 8 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

XXXVIII.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "Third" in line 47 of page 8 and ending with the word "union" in line 1 of page 9 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

XXXIX.

Respondent excepts to the findings and conclu-

sions of the Trial Examiner in his Intermediate Report commencing with the word "Jones" in line 52 of page 8 and ending with the word "offers" in line 60 of page 8 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

XL.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "The" in line 8 of page 9 and ending with the word "Respondents" in line 9 of page 9 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

XLI.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "It" in line 12 of page 9 and ending with the word "exists" in line 12 of page 9 of said Report for the reason that such findings and conclusions are not supported by substantial evidence in the record considered as a whole and are contrary to the law of the case.

XLII.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "the" in line

14 of page 9 and ending with the word "discharge" in line 16 of page 9 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

XLIII.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "Be" in line 23 of page 9 and ending with the word "Oregon" in line 26 of page 9 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

XLIV.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "Actually" in line 46 of page 9 and ending with the word "proceeding" in line 49 of page 9 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

XLV.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "Even" in line 50 of page 9 and ending with the word "dismissal" in line 60 of page 9 of said Report for the reason

that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

XLVI.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "The" in line 7 of page 10 and ending with the word "proceeding" in line 8 of page 10 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

XLVII.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "The" in line 17 of page 10 and ending with the word "Act" in line 29 of page 10 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

XLVIII.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "The" in line 32 of page 10 and ending with the word "Company" in line 34 of page 10 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record

considered as a whole and are contrary to the law of the case.

XLIX.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "The" in line 34 of page 10 and ending with the word "Tooze" in line 37 of page 10 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

L.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "The" in line 37 of page 10 and ending with the word "true" in line 3 of page 11 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

LI.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "It" in line 40 of page 10 and ending with the word "agreement" in line 45 of page 10 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

LII.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "In" in line 45 of page 10 and ending with the word "Tooze" in line 47 of page 10 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

LIII.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "The" in line 51 of page 10 and ending with the word "merit" in line 51 of page 10 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

LIV.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "On" in line 51 of page 10 and ending with the word "office" in line 55 of page 10 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

LV.

Respondent excepts to the findings and conclu-

sions of the Trial Examiner in his Intermediate Report commencing with the word "In" in line 55 of page 10 and ending with the word "Union" in line 58 of page 10 of said Report for the reason that such findings and conclusions are not supported by substantial evidence in the record considered as a whole and are contrary to the law of the case.

LVI.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "Plainly" in line 3 of page 11 and ending with the word "Local 2288" in line 5 of page 11 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

LVII.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "The" in line 5 of page 11 and ending with the word "justified" in line 7 of page 11 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

LVIII.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "Knight" in

line 11 of page 11 and ending with the word "Company" in line 13 of page 11 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

LIX.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "The" in line 13 of page 11 of said Report and ending with the word "Act" in line 16 of page 11 for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

LX.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "Moreover" in line 16 of page 11 and ending with the word "Act" in line 21 of page 11 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

LXI.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "The" in line 26 of page 11 and ending with the word "commerce" in line 31 of page 11 of said Report for the reason

that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

LXII.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "It" in line 36 of page 11 and ending with the word "Act" in line 41 of page 11 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

LXIII.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "As" in line 43 of page 11 and ending with the word "reinstatement" in line 19 of page 12 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

LXIV.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "The" in line 55 of page 11 and ending with the word "employment" in line 58 of page 11 of said Report for the reason that such findings and conclusions are not sup-

ported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

LXV.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "As" in line 21 of page 12 and ending with the word "Act" in line 27 of page 12 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

LXVI.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "1. Lumber" in line 34 of page 12 and ending with the word "Act" in line 36 of page 12 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

LXVII.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "3. By" in line 43 of page 12 and ending with the word "Act" in line 45 of page 12 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record con-

sidered as a whole and are contrary to the law of the case.

LXVIII.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "4. By" in line 47 of page 12 and ending with the word "act" in line 50 of page 12 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

LXIX.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "5. By" in line 1 of page 13 and ending with the word "Act" in line 4 of page 13 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

LXX

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "6. By" in line 6 of page 13 and ending with the word "Act" in line 9 of page 13 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

LXXI.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "7. The" in line 10 of page 13 and ending with the word "Act" in line 12 of page 13 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

LXXII.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "2. Lumber" in line 6 of page 14 and ending with the word "it" in line 55 of page 14 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

LXXIII.

Respondent excepts to the findings and conclusions of the Trial Examiner in his Intermediate Report commencing with the word "It" in line 1 of page 15 and ending with the word "above" in line 7 of page 15 of said Report for the reason that such findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the law of the case.

Having duly excepted, respondent prays that the

complaint in these matters be dismissed in their entirety.

Respectfully submitted,

ARTHUR GARRETT
& JAMES M. NICOSON,
/s/ By ARTHUR GARRETT,
Attorneys for Respondent.

United States of America

Before the National Labor Relations Board

Case No. 21-CA-2116

W. B. JONES LUMBER COMPANY, INC.

and

DON F. TOOZE, An Individual

Case No. 21-CB-671

LUMBER AND SAWMILL WORKERS'
UNION LOCAL No. 2288, AFL

and

DON F. TOOZE, An Individual

DECISION AND ORDER

On July 18, 1955, Trial Examiner Herman Marx issued his Intermediate Report in the above-entitled consolidated proceedings, finding that the Respondents had engaged in and were engaging in certain

unfair labor practices, and recommending that the Respondents cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent Union filed exceptions to the Intermediate Report and a supporting brief.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in these cases and hereby adopts the findings, conclusions and recommendations of the Trial Examiner¹ except as modified herein.²

¹ We find no merit in the contention of the Respondent Union that the record does not contain sufficient reliable evidence to establish that the operations of the Respondent Employer satisfy the Board's minimum standards for the assertion of jurisdiction. See *Amalgamated Meat Cutters and Butcher Workmen*, 81 NLRB 1051.

² The Trial Examiner recommended that the Respondents be ordered to cease and desist from in any like or similar manner infringing upon the rights of employees as guaranteed by the Act. Because we believe that a discriminatory discharge goes to the very heart of the Act and because we believe that the Respondents' repeating the commission of the violations involved herein in the future may be anticipated by reason of the conduct of the Respondents herein, we shall order that Respondents cease and desist from in any manner infringing upon the rights of employees as guaranteed by the Act. *N.L.R.B. v. Entwistle Mfg. Co.*, 120 F. 2d 532, 536 (C. A. 4).

ORDER

Upon the entire record in these cases and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that:

1. W. B. Jones Lumber Company, Inc., its officers, agents, successors, and assigns, shall:

(1) Cease and desist from:

(a) Encouraging membership of its employees in Lumber and Sawmill Workers' Union, Local 2288, AFL, or any other labor organization, or discouraging membership in any labor organization, by discriminatorily discharging its employees or in any other manner discriminating against them in regard to their hire, tenure or any other term or condition of employment, except as authorized by Section 8 (a) (3) of the Act;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action which

the Board finds will effectuate the policies of the Act:

(a) Offer to Don F. Tooze immediate and full reinstatement to his former, or a substantially equivalent position, without prejudice to his seniority and other rights and privileges, and jointly and severally with Lumber and Sawmill Workers' Union, Local 2288, AFL, make him whole in the manner and according to the method set forth in Section V of the Intermediate Report and entitled "The remedy";

(b) Preserve and make available to the Board or its agents upon request, for examination and copying, all payroll records, social-security payment records, time cards, personnel records and reports, and all other records necessary to analyze the amounts of back pay due and the rights of employment under the terms of this Order;

(c) Post in conspicuous places, including places where notices to employees are customarily posted, at its principal place of business in Los Angeles, California, copies of the notice attached hereto as Appendix A.² Copies of said notice, to be furnished by the Regional Director for the Twenty-first Region of the Board shall, after being signed by a duly authorized official representative of the Company, be posted by it immediately upon receipt

² In the event this Order is enforced by decree of a United States Court of Appeals there shall be inserted before the words, "A Decision and Order" the words "A Decree of the United States Court of Appeals, Enforcing an Order."

thereof and maintained by it for a period of 60 consecutive days thereafter. Reasonable steps shall be taken by the Company to insure that said notices are not altered, defaced, or covered by any other material;

(d) Notify the said Regional Director in writing within 10 days from the date of this Order, what steps the said Company has taken to comply with the foregoing.

2. Lumber and Sawmill Workers' Union, Local 2288, AFL, its officers, representatives, agents, successors, and assigns, shall:

(1) Cease and desist from:

(a) Causing, or attempting to cause, W. B. Jones Lumber Company, Inc., or any other employer, except as authorized by Section 8 (a) (3) of the Act, to discharge employees or in any other manner discriminate against them in regard to their hire, tenure of employment or any term or condition of employment, because such employees are not members of the Union;

(b) In any other manner restraining or coercing employees of W. B. Jones Lumber Company, Inc., or of any other employer, in the exercise of the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of such activities, except to the extent that such rights may be affected by an agreement requiring membership in a labor organi-

zation as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

(2) Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Notify W. B. Jones Lumber Company, Inc., Los Angeles, California, and Don F. Tooze, in writing, that it has no objection to the employment by the Company of the said Don F. Tooze and request the Respondent Company to offer Don F. Tooze immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority and other rights and privileges;

(b) Jointly and severally with W. D. Jones Lumber Company, Inc. make whole Don F. Tooze in the manner and according to the method set forth in Section V of the Intermediate Report entitled "The Remedy";

(c) Post in conspicuous places, including places where notices to members are customarily posted, at its office and its usual membership meeting place, copies of the notice in the form attached hereto as Appendix B.³ Copies of said notice, to be furnished by the Regional Director for the Twenty-first Region of the Board, shall, after being duly signed by a duly authorized representative of the said Union, be posted by it immediately upon receipt thereof

³ In the event this Order is enforced by decree of a United States Court of Appeals there shall be inserted before the words, "A Decision and Order" the words "A Decree of the United States Court of Appeals, Enforcing an Order."

and maintained by it for a period of 60 consecutive days thereafter. Reasonable steps shall be taken by said Union to insure that said notices are not altered, defaced, or covered by any other material;

(d) Forthwith mail copies of the said notice marked Appendix B to the said Regional Director, after such copies have been signed as provided in Paragraph 2 (2) (c) of this Order, for posting at the place of business of the Company, if it so agrees;

(e) Notify the said Regional Director in writing, within 10 days from the date of this Order, what steps the said Union has taken to comply with the foregoing.

Dated, Washington, D. C., Oct. 14, 1955.

[Seal] PHILIP RAY RODGERS,
 Acting Chairman,
 ABE MURDOCK, Member,
 IVAR H. PETERSON, Member,
 BOYD LEEDOM, Member,
 National Labor Relations Board

[Note: Appendix A and B are the same as those set out at pages 40-43 except for the words "Pursuant to A Decision and Order.]

Affidavit of Service by Mail and Postal Return
Receipts Attached.

In the United States Court of Appeals
For the Ninth Circuit

No. 15172

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

W. B. JONES LUMBER COMPANY, INC. and
LUMBER AND SAWMILL WORKERS'
UNION, LOCAL 2288, AFL, Respondents.

CERTIFICATE OF THE NATIONAL LABOR
RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 102.84, Rules and Regulations of the National Labor Relations Board—Series 6, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record of a consolidated proceeding had before said Board, entitled, “W. B. Jones Lumber Company, Inc. and Don F. Tooze, an Individual”; and “Lumber and Sawmill Workers’ Union Local No. 2288, AFL and Don F. Tooze, an Individual,” the same being known as Case Nos. 21-CA-2116 and 21-CB-671 respectively before said Board, such transcript includes the pleadings and testimony and evidence upon which the order of the Board in said consolidated proceeding was entered, and includes also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

1. Stenographic transcript of testimony taken before Trial Examiner Herman Marx on May 9, 10, 25, 26, and 27, 1955, together with all exhibits introduced in evidence and rejected exhibit.

2. Trial Examiner Marx's Order to Show Cause dated July 5, 1955, together with affidavit of service and United States Post Office return receipts thereof.

3. Letter dated July 7, 1955 from counsel for Respondent Lumber and Sawmill Workers' Union, Local 2288, AFL, (hereinafter called respondent Union) objecting to issuance of Trial Examiner's Order to Show Cause.

4. General Counsel's Return and Answer to Order to Show Cause and Argument in Support of the Order, dated July 7, 1955.

5. Copy of Trial Examiner Marx's Intermediate Report and Recommended Order (annexed to item 7 hereof); and copy of Order transferring case to the National Labor Relations Board, both issued on July 18, 1955, together with affidavit of service and United States Post Office return receipts thereof.

6. Respondent Union's exceptions to the Intermediate Report received by the Board on August 9, 1955.

7. Copy of Decision and Order issued by the National Labor Relations Board on October 14, 1955, with copy of Intermediate Report annexed, together with affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 27th day of July, 1956.

[Seal] /s/ FRANK M. KLEILER,
Executive Secretary, National
Labor Relations Board

[Endorsed]: No. 15172. United States Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. W. B. Jones Lumber Company, Inc. and Lumber and Sawmill Workers' Union, Local 2288, AFL, Respondents. Petition for Enforcement of an Order of the National Labor Relations Board.

Filed: July 31, 1956.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
For the Ninth Circuit

No. 15172

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

W. B. JONES LUMBER COMPANY, INC. and
LUMBER AND SAWMILL WORKERS'
UNION, LOCAL 2288, AFL, Respondents.

PETITION FOR ENFORCEMENT OF AN
ORDER OF THE NATIONAL LABOR RE-
LATIONS BOARD

To the Honorable, the Judges of the United States
Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Secs. 151, et seq.), hereinafter called the Act, respectfully petitions this Court for the enforcement of its order against Respondents, W. B. Jones Lumber Company, Inc. (hereinafter called Respondent Company), its officers, agents, successors, and assigns, and Lumber and Sawmill Workers' Union, Local 2288, AFL (hereinafter called Respondent Union), its officers, representatives, agents, successors, and assigns. The consolidated proceeding resulting in said order is known upon the records of the Board as "W. B. Jones Lumber Company, Inc. and Don F. Tooze, an Indi-

vidual, Case No. 21-CA-2116; Lumber and Sawmill Workers' Union Local No. 2288, AFL and Don F. Tooze, an Individual, Case No. 21-CB-671."

In support of this petition the Board respectfully shows:

(1) Respondent Company is a California corporation engaged in business in the State of California and Respondent Union is a labor organization engaged in promoting and protecting the interests of its members in the State of California, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

(2) Upon due proceedings had before the Board in said matter, the Board on October 14, 1955, duly stated its findings of fact and conclusions of law, and issued an Order directed to the Respondent Company, its officers, agents, successors, and assigns, and to the Respondent Union, its officers, representatives, agents, successors, and assigns. On the same date, the Board's Decision and Order was served upon Respondents by sending copies thereof postpaid, bearing Government frank, by registered mail, to Respondents' Counsel.

(3) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, the Board is certifying and filing with this Court a transcript of

the entire record of the consolidated proceeding before the Board upon which the said Order was entered, which transcript includes the pleadings, testimony and evidence, finding of fact, conclusions of law, and the Order of the Board sought to be enforced.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondents and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the Order made thereupon a decree enforcing in whole said Order of the Board, and requiring Respondent Company, its officers, agents, successors, and assigns, and Respondent Union, its officers, representatives, agents, successors, and assigns, to comply therewith.

Dated at Washington, D. C., this 22nd day of June, 1956.

/s/ MARCEL MALLET-PREVOST,
Assistant General Counsel, National
Labor Relations Board

[Endorsed]: Filed June 25, 1956. Paul P. O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

ANSWER OF LUMBER AND SAWMILL
WORKERS' UNION LOCAL 2288, AFL, TO
PETITION FOR ENFORCEMENT OF AN
ORDER OF THE NATIONAL LABOR RE-
LATIONS BOARD

Comes now Lumber and Sawmill Workers' Union Local 2288, AFL, hereinafter referred to as Respondent Union, and for itself and no other files this its answer to the petition of the National Labor Relations Board for enforcement of an order of the National Labor Relations Board, and admits, denies and alleges, as follows:

I.

Answering Paragraph (1) of the petition, Respondent Union admits that it is a labor organization engaged in promoting and protecting the interests of its members in the State of California within this judicial circuit, but denies generally and specifically that Respondent Union committed any unfair labor practices within this or any other judicial district, or that Respondent Union has committed any unfair labor practices of any nature. Respondent Union denies that by virtue of Section 10 (e) of the National Labor Relations Act as amended this court has jurisdiction of these proceedings. Respondent Union admits that W. B. Jones Lumber Company, Inc. is a California corporation engaged in business in the State of California.

II.

Answering Paragraph (2) of the Petition, Respondent Union denies that due proceedings were had before the National Labor Relations Board. Respondent Union admits that on or about October 14, 1955 the National Labor Relations Board issued a purported Findings of Fact and Conclusions of Law, and a purported Order directed to Respondent Union, its officers, representatives, agents, successors and assigns, but Respondent Union denies that either the purported Findings of Fact, Conclusions of Law, or the purported Order were or are supported by substantial evidence on the record considered as a whole, and Respondent Union avers that the purported Conclusions of Law and the purported Order were and are erroneous and are contrary to the law of the case.

Respondent Union admits that the purported Decision and Order, Findings of Fact and Conclusions of Law were served upon Respondent Union.

III.

Answering Paragraph (3) of the Petition, Respondent Union avers that it is without information or knowledge upon which to form a belief as to the allegations of said paragraph, and basing its answer on that ground denies each and every allegation therein contained.

IV.

Affirmatively, Respondent Union alleges:

1. That the National Labor Relations Board does not have jurisdiction over the Respondent Union or

the subject matter of the purported Decision and Order.

2. That Respondent Union has not committed any unfair labor practices.

3. That the purported Findings of Fact, Conclusions of Law and Order are not supported by substantial evidence on the record considered as a whole.

4. That the purported Findings of Fact, Conclusions of Law and the purported Order are each and all contrary to law.

Wherefore, having fully answered, Respondent Union prays that the petition be denied, that the Court make and enter an Order setting aside in full the purported Order of the National Labor Relations Board.

ARTHUR GARRETT and
JAMES M. NICOSON,

/s/ By ARTHUR GARRETT,
Attorneys for Respondent
Union

Certificate of Service Attached.

[Endorsed]: Filed July 16, 1956. Paul P. O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS UPON WHICH
RESPONDENT UNION, LUMBER AND
SAWMILL WORKERS' UNION LOCAL
No. 2288, AFL, INTENDS TO RELY

To the Honorable, the Judges of the United States
Court of Appeals, for the Ninth Circuit:

In concurrence with the rules of this Court, Respondent Union, Lumber and Sawmill Workers' Union Local No. 2288, AFL, for itself and no other hereby states the following points upon which it intends to rely herein.

1. The National Labor Relations Board does not have jurisdiction over the Respondent Union, Lumber and Sawmill Workers' Union Local No. 2288, AFL.

2. That the proceedings before the National Labor Relations Board were unconstitutional, null and void, in that they deprived Respondent Union, Lumber and Sawmill Workers' Union Local No. 2288, AFL, of its rights guaranteed to it by the Fifth Amendment to the Constitution of the United States.

3. That the National Labor Relations Board's Findings of Fact and Conclusions of Law that Respondent Union has committed unfair labor practices are not supported by substantial evidence on the record considered as a whole and therefore are void and of no effect. That the National Labor Relations Board's Order issued herein is not sup-

ported by substantial evidence on the record considered as a whole and is therefore of no effect and void.

4. That the National Labor Relations Board's Findings of Fact, Conclusions of Law and Order issued herein are contrary to law.

5. That the National Labor Relations Board's Findings of Fact, and Conclusions of Law that Respondent Union engaged in conduct in violation of Section 8 (b) (2) and Section 8 (b) (1) (A) of the National Labor Relations Act as amended are not supported by substantial evidence on the record considered as a whole and are therefore void and of no effect.

Respectfully submitted,

ARTHUR GARRETT and

JAMES M. NICOSON,

/s/ By ARTHUR GARRETT,

Attorneys for Respondent Union, Lumber and Saw-
mill Workers' Union Local No. 2288, AFL

Certificate of Service Attached.

[Endorsed]: Filed July 16, 1956. Paul P.
O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

ANSWER OF W. B. JONES LUMBER CO.,
INC. TO PETITION FOR ENFORCEMENT
OF AN ORDER OF THE NATIONAL LA-
BOR RELATIONS BOARD

Comes now W. B. Jones Lumber Co., Inc. (hereinafter referred to as respondent company) and, for itself and no other, files this its answer to the petition of the National Labor Relations Board for enforcement of an Order of the National Labor Relations Board and admits, denies and alleges as follows:

I.

Answering Paragraph (1) of the petition, respondent company admits that it is a California corporation engaged in business in the State of California within this judicial Circuit and admits that the Lumber and Sawmill Workers' Union Local No. 2288, AFL, is a labor organization engaged in promoting and protecting the interests of its workers in the State of California within this judicial Circuit, but denies generally and specifically that respondent company committed any unfair labor practices within this or any other judicial district, or that respondent company has committed any unfair labor practices of any nature.

Respondent company further denies that, by virtue of Section 10 (e) of the National Labor Relations Act as Amended, this Court has jurisdiction over these proceedings.

II.

Answering Paragraph (2) of the Petition, respondent company denies that due proceedings were had before the National Labor Relations Board. Respondent company admits that on or about October 14, 1955, the National Labor Relations Board issued a purported Findings of Fact and Conclusions of Law and a purported Order directed to respondent company, its officers, representatives, agents, successors and assigns, but respondent company denies that either the purported Findings of Fact, Conclusions of Law or purported Order were or are supported by substantial evidence of the record, considered as a whole, and respondent company avers that the purported Conclusions of Law and the purported Order were and are erroneous and contrary to the law of the case.

Respondent company admits that the purported Decision and Order, Findings of Fact and Conclusions of Law were served upon respondent company.

III.

Answering Paragraph (3) of the Petition, respondent company alleges that it is without information or knowledge upon which to form a belief as to the allegations of said paragraph and basing its answer on that ground denies each, every and all the allegations therein contained.

IV.

For a separate and affirmative defense, respondent company alleges as follows:

(1) That the National Labor Relations Board does not have jurisdiction over the respondent company or the subject matter of the purported Decision and Order.

(2) That respondent company has not committed, nor participated in, nor been a part to any unfair labor practice or practices.

(3) That the purported Findings of Fact, Conclusions of Law, and Order are not supported by substantial evidence on the record, considered as a whole.

(4) That the purported Findings of Fact, Conclusions of Law and the purported Order are and each of them is contrary to law.

Wherefore, having fully answered, respondent company prays that the Petition be denied; that the Court make and enter an Order setting aside in full the purported Order of the National Labor Relations Board; and for such other and further relief as the Court may deem proper in the premises.

/s/ JOHN MICHAEL McCORMICK,
Attorney for W. B. Jones Lumber
Co., Inc., respondent company

Certificate of Service attached.

[Endorsed]: Filed July 31, 1956. Paul P. O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS UPON WHICH
RESPONDENT W. B. JONES LUMBER
CO., INC. INTENDS TO RELY

To the Honorable, the Judges of the United States
Court of Appeals, for the Ninth Circuit:

In concurrence with the rules of this Court, respondent company W. B. Jones Lumber Co., Inc. for itself and no other hereby states the following points upon which it intends to rely herein.

1. The National Labor Relations Board does not have jurisdiction over the respondent company, W. B. Jones Lumber Co., Inc.

2. The proceedings before the National Labor Relations Board were unconstitutional, null and void in that they deprived respondent company, W. B. Jones Lumber Co., Inc., of its rights guaranteed to it by the Fifth Amendment to the Constitution of the United States.

3. The National Labor Relations Board's Findings of Fact and Conclusions of Law that respondent company has committed unfair labor practices are not supported by substantial evidence on the record, considered as a whole, and therefore are void and of no effect. The National Labor Relations Board's Order issued herein is not supported by substantial evidence on the record, considered as a whole, and therefore is of no effect and void.

4. The National Labor Relations Board's Find-

II.

ings of Fact, Conclusions of Law, and Order issued herein are contrary to law.

5. The National Labor Relations Board's Findings of Fact and Conclusion of Law that Respondent company engaged in conduct in violation of Section 8 (a) (1) and Section 8 (a) (3) of the National Labor Relations Act as Amended are not supported by substantial evidence on the record, considered as a whole, and therefore are void and of no effect.

Respectfully submitted,

/s/ JOHN MICHAEL McCORMICK,
Attorney for W. B. Jones Lumber
Co., Inc., respondent company

Certificate of Service Attached.

[Endorsed]: Filed July 31, 1956. Paul P. O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH PETITIONER INTENDS TO RELY

In this proceeding, petitioner, National Labor Relations Board, will urge and rely upon the following points:

1. The Board properly asserted jurisdiction over respondents.
2. A summary decree of enforcement should be

issued against respondent Jones since it filed no exceptions to the Intermediate Report.

3. Substantial evidence supports the Board's finding that respondent Union violated Sections 8 (b) (2) and 8 (b) (1) (A) by causing the Company to discriminate against Tooze.

Dated at Washington, D. C. this 27th day of July, 1956.

/s/ MARCEL MALLET-PREVOST,
Assistant General Counsel, National
Labor Relations Board

[Endorsed]: Filed July 31, 1956. Paul P. O'Brien, Clerk.

Before the National Labor Relations Board
Twenty-First Region

Case No. 21-CA-2116

In the Matter of W. B. JONES LUMBER COMPANY, INC., and DON F. TOOZE, AN INDIVIDUAL.

Case No. 21-CB-671

In the Matter of LUMBER AND SAWMILL WORKERS' UNION, LOCAL No. 2288, AFL, and DON F. TOOZE, AN INDIVIDUAL.

TRANSCRIPT OF PROCEEDINGS

Hearing Room No. 2, Room 704, 111 West Seventh Street, Los Angeles, California. Monday, May 9, 1955.

Pursuant to notice, the above-entitled matter came on for hearing at 10:00 o'clock, a.m.

Before: Herman Marx, Trial Examiner.

Appearances: Paul E. Weil, Room 704, 111 West Seventh Street, Los Angeles, California, appearing on behalf of the General Counsel of the National Labor Relations Board. [1]*

John Michael McCormick, 670 Subway Terminal Building, 417 South Hill Street, Los Angeles 13, California, appearing on behalf of W. B. Jones Lumber Company, Inc.

*Page numbers appearing at top of page of original Reporter's Transcript of Record.

James M. Nicoson and Arthur Garrett, 2200 West Seventh Street, Los Angeles, California, appearing on behalf of the Lumber and Sawmill Workers' Union, Local No. 2288, AFL. [2]

PROCEEDINGS

* * * * *

Mr. Weil: 1-E, the Consolidated Complaint in Cases Nos. 21-CA-2116, 21-CB-671, dated the 21st day of April, 1955, signed by George A. Yager, Acting Regional Director;

1-F, Order Consolidating Cases Nos. 21-CA-2116 and 21-CB-671, and Notice of Hearing setting the hearing for this date and dated on the 21st day of April, 1955; * * * * * [4]

1-H, Answer of the respondent union in the consolidated case, dated the 2nd day of May, 1955, signed by Arthur Garrett and James Nicoson, attorneys for the respondent union; and

* * * * *

Mr. Nicoson: Respondent union, Local 2288, objects to the receipt of General Counsel's Exhibit 1-E and 1-F on the grounds that they are not signed by the Acting Regional Director for the Twenty-first Region of the National Labor Relations Board and, accordingly, we move to dismiss this proceeding in its entirety. If it's necessary, I'm prepared to take the stand and testify that that is not Mr. Yager's signature on [5] either of those documents.

(Thereupon the documents above-referred to were marked General Counsel's Exhibit No. 1-A through 1-J, inclusive, for identification.)

Trial Examiner: What is your position, Mr. Weil?

Mr. Weil: I must say I'm not that familiar with Mr. Yager's signature but I can take a position on it. It was signed either by Mr. Yager or by an agent of Mr. Yager's designated for that purpose.

Trial Examiner: Assuming that it isn't?

Mr. Weil: Assuming it isn't his own signature, I assume it's a signature of the duly delegated agent of Mr. Yager's.

Mr. Nicoson: The document recites that the General Counsel has "caused it to be signed" by the Acting Regional Director and it is not so signed.

Trial Examiner: I have no objection to taking any evidence you have to offer. I am now going to ask for whatever you have to offer on the motion. I will be glad to receive the evidence.

Mr. Nicoson: All right.

Trial Examiner: Mr. Nicoson is offering himself as a witness and will be sworn.

JAMES M. NICOSON

a witness called by and on behalf of the Respondent Union, being first duly sworn, was examined and testified as follows:

Trial Examiner: We will suspend with the General Counsel's [6] case in chief in order to dispose of the motion.

Go ahead, Mr. Nicoson.

Direct Examination

The Witness: My name is James M. Nicoson, attorney licensed to practice in the State of Califor-

nia with offices at 111 West Seventh Street, Los Angeles 14.

I have been employed by the National Labor Relations Board in the capacity of Regional Attorney during the years 1940 to '48 during which time I became acquainted, well acquainted, I might say, with Mr. George Yager and his signature. I have seen his signature perhaps hundreds of times. I am prepared to testify that the signature on the documents to which I have raised the objection is not the signature of Mr. George Yager, Acting Regional Director of the Twenty-first Region.

Trial Examiner: You so testify, Mr. Nicoson?

The Witness: I so testify.

Trial Examiner: Anything else, sir?

The Witness: That is all.

Trial Examiner: Any questions? [7]

* * * * *

Trial Examiner: Have you any evidence to offer in opposition to the motion?

Mr. Weil: I have no evidence to offer other than I wish to make the statement I have checked during the recess with Mr. Yager who told me it is indeed not his signature but it is his signature as signed by Mr. Harrington who is the chief legal officer at present in the Region and who has express authority to sign documents of this nature.

Trial Examiner: I can not regard your statement as evidence, you understand that? [8]

* * * * *

Trial Examiner: I will take the motion under advisement and pending opportunity for introduc-

tion of any evidence by the General Counsel.

(Witness excused.)

Mr. Nicoson: Your Honor, if I may interpose here now, I'm quite certain that that is not Mr. Yager's signature as I [9] have testified.

I do want on the record to oppose to taking of any evidence or any proceedings under what to me now appears to be an improper and perhaps illegal complaint and notice of hearing. We are not here upon a proper notice signed by a proper person and I object to taking any evidence until that matter is corrected. I am not adverse to letting the matter be postponed until the problem is cleared up, issue, perhaps, a new complaint, but I'm insisting on having a proper complaint before we proceed taking any evidence in this case. [10]

* * * * *

WILLIAM B. JONES

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Weil): What is your full name, sir? [11] A. William B. Jones.

Q. What is your address?

A. My address?

Q. Yes, sir. A. Home or business?

Q. Business.

A. 5036 Long Beach Avenue, Los Angeles 58.

Q. What is that business located at that address? A. Lumber business.

(Testimony of William B. Jones.)

Q. Under what name?

A. W. B. Jones Lumber Company, Inc.

Q. In what state is that corporation registered?

A. You will have to phrase it——

Q. In what state is that business incorporated?

A. California.

Q. What is the general nature of the company's business?

A. Retail and wholesale.

Q. Do you sell anything but lumber?

A. Plywood occasionally and then various lumber products.

Q. How many employees do you employ?

A. 15 to 35.

Mr. Nicoson: 15 to 35?

The Witness: 15 to 40.

Trial Examiner: I take it under given circumstances?

The Witness: Volume and conditions. [12]

* * * * *

Q. Will you tell me what supervisors do you have at the lumber yard?

A. Supervisors?

Q. Yes.

A. We don't call them supervisors. We have Mr. Moore, general manager. We have Mr. Van Ide, the sales manager, V-a-n I-d-e. We have Mr. Alex Hardy, H-a-r-d-y, yard superintendent. [13]

* * * * *

Q. (By Mr. Weil): What labor unions if you know now represent your employees?

* * * * *

(Testimony of William B. Jones.)

The Witness: We have the Lumber and Sawmill Workers', I don't know the local number, and we have a truck drivers' union with the material dealers. I don't know how they phrase themselves.

Q. (By Mr. Weil): Does the company have any contract with any labor organizations, to your knowledge? A. We have contracts, yes.

Mr. Nicoson: Objection. May I strike the answer for the purpose of interposing the objection and object upon the grounds first, that there is no proper foundation having been laid, second, that it is not the best evidence, that if there are contracts, they are the best evidence of themselves. Third, it is incompetent, irrelevant and immaterial, at least at this posture of the record, is hearsay as to the respondent union. [14]

Trial Examiner: I will construe the objection as a motion to strike and deny the motion.

Q. (By Mr. Weil): What is your capacity with the company? A. President.

Q. In that capacity, have you had occasion to negotiate with any labor organization?

A. No.

* * * * *

Q. (By Mr. Weil): Who carries on the negotiations if any there are?

A. The big five, we call them. Five big yards do the negotiating and we go along with the negotiations.

Q. Are you one of the big five? A. No.

(Testimony of William B. Jones.)

Q. Do you adopt the contract that the five big yards negotiate? A. Yes.

Mr. Nicoson: Objected to on the ground it calls for a legal conclusion as to the adoption.

Trial Examiner: Perhaps so but I will let it stand. I overrule the objection.

Q. (By Mr. Weil): Have there ever been any occasions under [15] which the company has negotiated with the union, your company itself has negotiated with the union as to any terms of any contract or as to any grievances?

Mr. Nicoson: Now, I will have to object to that first on the grounds indefinite and no proper foundation having been laid, no union having been even mentioned, hearsay as to this respondent, calls for a conclusion of the witness.

Trial Examiner: Overruled.

Mr. Nicoson: What union is he talking about?

Trial Examiner: We can get down to the refinement of positions, Mr. Nicoson, where we have to define what a table is. I'm going to get on with this hearing. You are entitled to make your position on on the record. If I am in error, I will be reversed or overruled. I have noted your objection and it is overruled.

Now, do you know the question, sir?

The Witness: Will you repeat it, please?

(The question was read.)

Trial Examiner: To be entirely fair, I don't know whether the witness would understand which union from the phrasing of your question. Bear in

(Testimony of William B. Jones.)

mind he referred to two unions before. One of them he identified I think briefly as the Lumber and Sawmill Workers' Union without identifying the local number. I think you owe it to the witness to indicate which union if any you mean. You better rephrase your question. [16]

Mr. Weil: I will rephrase the question.

Q. (By Mr. Weil): Have you or any of the officers of your company had occasion to negotiate with the Lumber and Sawmill Workers' Union which you testified represents some of your employees concerning either contractual terms or grievances, to your knowledge?

A. We don't negotiate grievances. They tell us. We've been told what to do by the union. We have never had any chance to negotiate as far as I'm concerned.

Q. Can you tell me any individual who has so told you what to do on behalf of the union?

A. In a case——

Mr. Nicoson: Wait just a minute. That is objected to on the grounds what he has been told to do is without any proper foundation, certainly hearsay.

Mr. McCormick: I join in that objection.

Trial Examiner: Yes.

Mr. Nicoson: If there is an answer I move to strike it.

Trial Examiner: I think I know what Mr. Weil has in mind. I believe I know what the witness has in mind. I am going to overrule the objections.

(Testimony of William B. Jones.)

Counsel now wants the name of the individual who you say told you what to do.

The Witness: The case we are on right now, Mr. Matzko, I don't know the spelling or correct pronunciation of his name, [17] he told us to fire a man or they would call a strike on the place.

Q. (By Mr. Weil): Is Mr. Matzko an employee of yours?

A. No, he is a delegate from the union, field man, they call him, I think.

Q. Have you had frequent contact with him or any other contact with him on that occasion?

A. Yes, things have come up.

Q. Beg pardon?

A. Various things come up from time to time. I mean that would be lengthy and I don't think pertain to this case. [18]

* * * * *

Q. (By Mr. Weil): When you hire new employees, do you tell them when they are hired that they must join the union?

A. The yard superintendent hires them. I don't know what the procedure is.

Q. Do you tell the union when you hire new employees? A. That I don't know.

Q. Have you given any of your supervisors, the yard superintendent or anyone else, any instructions about telling the union when you have new employees?

Mr. Nicoson: May that be answered yes or no?

Trial Examiner: Yes, answer that yes or no.

(Testimony of William B. Jones.)

The Witness: I don't know if they have been instructed to. Possible under my jurisdiction. [20]

* * * * *

WILLIS H. MERRILL

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Weil): Give your full name, please.

A. Willis H. Merrill.

Q. Your business address?

A. 1144 West 135th Street, Gardena.

Q. What is your business?

A. Sprague Engineering Corporation as employed in the fabrication and manufacture of aircraft testing and servicing equipment and some aircraft components hydraulic.

Mr. Nicoson: May I have the first part of it read back, please?

(The answer was read.)

Q. (By Mr. Weil): Mr. Merrill, did you at my request prepare a summarization or memorandum concerning the purchase of lumber if any from the Jones Lumber Company? A. That I did.

Q. Handing you what has been marked for identification as [35] General Counsel's Exhibit No. 3, is that the summary that you prepared?

A. It is. [36]

* * * * *

(Testimony of Willis H. Merrill.)

Q. (By Mr. Weil): Mr. Merrill, did you prepare this summary yourself? A. I did.

Q. From the company's books and records?

A. That's right.

Q. What is your position with the company?

A. Secretary-treasurer of the corporation.

Q. And the books and records from which you prepared these are under your control in that capacity? A. That's right, they are.

Q. Referring to the first item appearing thereon, "Raw Material Stock," Exhibit 3 for identification shows the figure \$5,839.70 less cartage, less sales tax and net purchases of \$5,658.43.

Could you explain what that means?

A. Well, in the first place, the lumber which we buy is not bought as an integral part of the equipment that we sell. It is bought for frame work on crating and as it indicates here in the comparison of figures in about 50 percent of our business approximately, the price of the crate is not negotiated in the sales price of the unit. In other words, it is an expense to us. [38]

* * * * *

The Witness: And the other half of the business, as indicated below, this isn't pertinent to your question, I realize, but it has to be given by comparison, it is definitely a part of the sales contract with the customer so that, therefore, in raw material stock of net purchases of \$5,658.43, it is practically impossible for us to allocate or identify it as to interstate sales or local sales. [39]

(Testimony of Willis H. Merrill.)

* * * * *

Q. Do you have any knowledge of what the lumber that you purchased from Jones Lumber Company was used for? [41]

* * * * *

The Witness: I will have to answer I have limited knowledge.

Q. (By Mr. Weil): From where do you derive this knowledge?

A. I derive the knowledge as far as the jobs are concerned from the application of the costs. I have a limited knowledge only in regard to the raw material stock which is the first item.

* * * * *

Q. (By Mr. Weil): Do you have any knowledge of the sales of your company, Mr. Merrill?

A. For the fiscal year ending September 30, 1954, they were approximately \$5,600,000.00.

Mr. Nicoson: You see where we get on those types of questions?

The Witness: I could——

Trial Examiner: Excuse me. You have an objection?

Mr. Nicoson: I have on the highly improper answer to this [42] question by voluntary, giving information over and beyond the question. I move now to strike the answer on the grounds it is not responsive, conclusion of the witness is not the best evidence.

Trial Examiner: There is no evidence before

(Testimony of Willis H. Merrill.)

me that isn't the best evidence. I overrule the objection and deny the motion. Go ahead.

Mr. Nicoson: May I say one thing, what about this figure of something over five million dollars?

Trial Examiner: I made my ruling.

Mr. Nicoson: I understand that, I'm simply trying to understand you.

Trial Examiner: I made my ruling. My ruling is clear. I denied the motion which you made which was responsive to your motion.

Mr. Nicoson: It isn't fair to me if I may say so for the record.

Trial Examiner: I don't know how clearer the statement can be that a motion you made is denied. I don't know of a more forthright way of passing on a motion. Go ahead, sir.

Q. (By Mr. Weil): Will you tell us what proportion of those sales are shipped in interstate commerce if you know?

Mr. Nicoson: Objected to on the grounds no foundation, hearsay, not the best evidence.

Trial Examiner: Let me have the question, please. [43]

(The question was read.)

Mr. Nicoson: May I add to that it calls for a legal conclusion of the witness?

Trial Examiner: It calls for his knowledge. Overruled. Go ahead. You may cross examine and bring out whether his knowledge is good or bad or indefinite. You may answer the question, sir.

(Testimony of Willis H. Merrill.)

The Witness: You want me to answer the question?

Trial Examiner: Yes. You are instructed, that calls for your knowledge.

The Witness: That's right. I can say to my knowledge at least 70 per cent of it is interstate.

* * * * *

Q. (By Mr. Weil): What other uses is that lumber put to, that raw material stock, other than packing and crating if you know?

A. I'm not competent to answer that question.

Q. You mean you don't know what the other uses are? A. That's right.

* * * * *

Cross Examination * * * * *

Q. (By Mr. Nicoson): All right. Will you tell me, now, you mentioned that 70 percent of some figure went into interstate commerce. What figure were you using on that?

A. It is no figure that is here. It is a published figure [45] of annual sales of five million six hundred plus thousand.

Q. And 70 percent of that figure——

A. That's right.

Q. ——moved in interstate commerce?

A. That's right.

Q. Are you prepared to tell me to what points in interstate commerce this material moved?

A. Practically every state in the United States.

Q. Can you give us some example of some of

(Testimony of Willis H. Merrill.)

the persons to whom you shipped and some of the amounts?

A. I could if I were prepared with them. I don't have them in my head.

Q. You don't have that?

A. I know the places but I don't know the amounts or people.

Q. Do you have any idea as to the amounts?

A. No idea at all right here, no. I'm not prepared to answer that question.

Trial Examiner: I wasn't sure whether counsel asked you for some of the people to whom these shipments were made.

The Witness: Yes, I believe he did, sir.

Trial Examiner: Do you know any of those?

The Witness: Well, United States Air Force at Wright-Patterson Field.

Trial Examiner: Where is that located?

The Witness: That is in Dayton, Ohio. Boeing Airplane [46] Company in Wichita, Kansas and, also, in Seattle, Washington. There is Chance Vought in Texas, Bell Aircraft in New York, there's Glen L. Martin Company in Maryland, to name a few.

Trial Examiner: Why don't you name some more if you have them?

The Witness: Well, it will take a little time to reflect. There is the Ford Motor Company in Michigan. There is the Navy in Philadelphia—

Trial Examiner: If you find that is all you can recall, it's all right.

(Testimony of Willis H. Merrill.)

The Witness: That is all.

Q. (By Mr. Nicoson): How much of the 70 percent of interstate commerce did you ship to the Air Force in Dayton, Ohio?

A. I think I couldn't answer without having the figures before me.

Q. How much of the 70 percent figure that moved in interstate commerce did you ship to Boeing at Wichita?

A. I don't know, that is, the exact figures. I wasn't asked to prepare those figures.

Q. How much of the 70 percent did you say interstate commerce was shipped to Boeing at Seattle?

A. I don't even recall the contract price on that one offhand.

Q. How much of the 70 percent was shipped to Texas?

A. I don't know that answer offhand.

Q. How much was sent to Bell Aircraft in New York? [47]

A. I'm sorry, but I have none of the recap of those contracts before me.

Q. Can you tell me the portion of the 70 percent which was sent to Glen Martin?

A. Not as individual items.

Q. Nor as to the Ford Motor Company in Michigan? A. No.

Q. Nor as to the Navy in Philadelphia?

A. No.

Q. Nor as to any of the persons you mentioned?

(Testimony of Willis H. Merrill.)

A. Not with the records I have here. [48]

* * * * *

Mr. Nicoson: Yes. I move to strike the testimony on the grounds it's hearsay, conclusionary on the part of the witness, no proper foundation having been laid, not the best evidence.

Trial Examiner: Referring to all his testimony, I take it?

Mr. Nicoson: Directed to all the testimony. It's otherwise incompetent, immaterial and irrelevant.

Trial Examiner: I will deny the motion.

Mr. Nicoson: I make the same motion with respect to the witness' testimony with respect to interstate commerce and all testimony in that respect.

Trial Examiner: I will deny that motion.

What do you wish to do with General Counsel's 3 for identification?

Mr. Weil: I wish to offer it.

Mr. Nicoson: Objected to on the grounds it is not the best evidence, calls for a conclusion of the witness, hearsay as to this respondent, incompetent, irrelevant and immaterial, no proper foundation having been laid for it.

Mr. McCormick: No objection.

Q. (By Trial Examiner): About how far is Gardena, California, from here?

A. Thirteen miles, sir.

Q. Will you tell me if you know in what form the item gross [49] purchases of raw material stock is kept in your records, what kind of a record is it?

(Testimony of Willis H. Merrill.)

A. You want to see the records?

Q. Have you the records here?

A. Yes, I do.

Q. Have you records corresponding all the items in General Counsel's 3 for identification?

A. Yes, I do. I mean I have the records from which I developed those figures.

Q. You have the records here?

A. Yes, I do.

* * * * *

Trial Examiner: Would you have any objection to leaving those records here for some short period of time?

The Witness: I would rather not, sir. They are the only copies I have of those records.

Trial Examiner: By a short period of time, I meant until tomorrow some time.

The Witness: I would hate to lose any of them. I mean I'm subject to audit by the State Board of Equalization and Air Force and so forth. [50]

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(The document heretofore marked General Counsel's Exhibit No. 3 for identification was received in evidence.) [52]

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[See page 217.]

ALEXANDER W. HARDY

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Weil): Will you give your full name and address?

A. Alexander W. Hardy, 6950 Yarmouth Avenue, Reseda.

Q. Are you employed by W. B. Jones Lumber Company? A. Yes.

Q. In what capacity?

A. Yard superintendent.

Q. How long have you been employed as yard superintendent? A. Five years.

Q. Five years. In that capacity, do you have anything to do with the hiring and firing of employees of the company?

A. I do all the hiring in the yards and all the firing.

Q. Do you, did you hire Don F. Tooze, the charging party in this case? A. Yes, sir.

Q. Do you recall when? A. No, I don't.

Q. Do you recall what month?

A. Not offhand.

Q. Do you recall what year?

A. Last year. [92]

Q. In the fall of the year?

A. Say approximately late summer, middle of the year.

* * * * *

(Testimony of Alexander W. Hardy.)

Q. (By Mr. Weil): How long did Mr. Tooze work for the company?

A. Two or three weeks, I believe.

Q. Have you any fault to find with the work that he did? A. No. [93]

* * * * *

Q. (By Mr. Weil): Is Mr. Tooze still employed there? A. No, he isn't.

Q. Was Mr. Tooze discharged by you?

A. No, sir, he wasn't.

Q. Was he discharged? A. Yes.

Q. By whom?

A. That's a difficult question to give a correct answer.

Trial Examiner: Well, were you present when he was discharged?

The Witness: Yes.

Trial Examiner: All right, tell us now what occurred on that occasion.

The Witness: Forced to discharge him.

Mr. Nicoson: I object to——

Trial Examiner: Excuse me. Strike it out.

You were present when he was discharged. Now, who else was present?

The Witness: Union representative.

Trial Examiner: And who else?

The Witness: Several people in the yard. I believe one [94] man here was present at the time.

Trial Examiner: The witness points to somebody in the rear of the room.

The Witness: Mr. Oyster.

(Testimony of Alexander W. Hardy.)

Trial Examiner: I take it that is O-y-s-t-e-r?

The Witness: Yes.

Mr. Nicoson: I still have to object on the ground no foundation having been laid for "tell us what happened on that occasion." He was simply present, hearsay as to the respondent without further foundation.

Trial Examiner: Maybe not binding upon you but certainly binding upon the respondent company. I will take it and see whether or not the evidence is relative.

Tell us what happened on that occasion, who said what.

The Witness: It was noon, we were eating lunch. Mr. Matzko, the union representative, came in. He comes in every week. He no longer comes in, no longer with the union. And said that Don Tooze would have to be fired immediately. I asked him why. He was very vague, gave me no direct answer——

Mr. Nicoson: Object to the conclusions of the witness.

Trial Examiner: Strike "very vague," and strike "no direct answer."

Did he say anything to you at all?

The Witness: Said Mr. Tooze was not in the union and could not work. I asked him if he could finish the day. He said, [95] no, he'd have to leave right then. I asked him what would happen if I didn't let him go. He said they'd put a picket line

(Testimony of Alexander W. Hardy.)

around the yard. We were very busy, I had no alternative.

Mr. Nicoson: Objected to as calling for a conclusion of the witness.

Trial Examiner: Strike "had no alternative."

What, if anything, did you do?

The Witness: I asked Don what the trouble was. First he didn't have much to say. Then he said he wasn't in the union, he would have to go up and see him. I said that if he'd get straightened out with the union he could go right on working. Let it that way for that day.

Trial Examiner: Was Mr. Matzko present at the time the conversation occurred between you and Mr. Tooze?

The Witness: I'm not sure. He was still in the yard. I don't know whether he was in the conversation.

Mr. Nicoson: I move to strike that as hearsay as to the respondent union.

Trial Examiner: I will deny the motion. If he turns out that it is hearsay as to the union in the light of all the evidence, it will be disregarded, not to be considered, but certainly is binding on the company.

Go ahead, sir.

Q. (By Mr. Weil): Did Mr. Tooze ever return to the yard?

A. Yes, at the end of the week he returned, offered to go [96] back to work.

Mr. Nicoson: Pardon?

(Testimony of Alexander W. Hardy.)

Q. (By Mr. Weil): Was anyone else present at that time? A. No.

Mr. Nicoson: I can't understand the witness. He drops his voice at the end of the answer. You—he came back at the end of the week?

The Witness: Came back at the end of the week. I believe on Tuesday or Wednesday Mr. Matzko was in. He came back Friday which was payday.

Mr. Nicoson: Tooze came back Friday?

The Witness: That's right.

Q. (By Mr. Weil): Did you have a conversation with him then?

A. Yes, I did.

Q. Was anyone else present that you can recall?

A. No.

Q. Can you tell us what this conversation was?

Mr. Nicoson: Objection on the ground it calls for hearsay as to this respondent.

Trial Examiner: All right, if hearsay it will be disregarded but is binding on the company. Disregarded as far as respondent union is concerned.

The Witness: I asked Tooze if he got straightened out with the union. He said no. I said we couldn't afford to have a picket line around the yard, I couldn't let him work without [97] being a union member.

Q. (By Mr. Weil): Was there any further conversation that you recall?

A. That is all I recall.

Q. Has Mr. Tooze been back to the yard since that time, to your knowledge? A. No.

(Testimony of Alexander W. Hardy.)

Q. Have you had any further conversation with Mr. Tooze? A. No.

Q. Had you ever had any conversation with Mr. Matzko before this time?

A. On this particular thing?

Q. No, on any matter?

A. I saw him every Wednesday, approximately every Wednesday.

Q. Did he come to the yard every Wednesday?

A. Yes.

Q. Did you converse with him every Wednesday? A. Practically every Wednesday.

Q. What subjects did you converse with Mr. Matzko?

A. New men and who wasn't paying their dues. He always come to me and asked me about who the new men were. That is about all.

Q. Did he tell you at any time what his purpose was in asking who the new men were?

Mr. Nicoson: Objected to as leading. [98]

Trial Examiner: I will take it. You may answer.

The Witness: He didn't tell me. It was to get them to come into the union, naturally, or see if they were union members.

Trial Examiner: Is that what he told you or is that what you estimate his purpose was.

The Witness: From his conversation that is what I gathered.

Mr. Nicoson: Object to what he gathered. I don't mind him saying what was said. That is a

(Testimony of Alexander W. Hardy.)

conclusion of the witness and I move to strike it.

Trial Examiner: Well, I will strike it.

Did you ever have any conversation with him about the subject of membership in the union?

The Witness: Yes.

Trial Examiner: During the year 1954?

The Witness: Yes.

Trial Examiner: Go to any one of those conversations and tell us about when it occurred and who was present and what was said.

The Witness: July of 1954, I hired some car unloaders. He came to the yard one Wednesday or Thursday, asked me who the new men were. I told him. He went and talked to the men, came back and said two of them weren't in the union. I asked him if they could get in the union. He said, yes, if they pay [99] their temporary dues, and that is where we left the conversation.

Trial Examiner: Go ahead.

Q. (By Mr. Weil): Do you know what union Mr. Matzko represented?

A. Local 2288. Sawmill Workers.

Q. Pardon me, are you or have you been a member of that union?

A. I have been on the temporary basis.

Trial Examiner: When was that?

The Witness: On and off for the last five years. I'm not required to be a union member but in order to avoid arguments with the union, I hold a temporary card when they require me to.

Trial Examiner: At any time during your mem-

(Testimony of Alexander W. Hardy.)

bership, do you know of your knowledge whether Mr. Matzko occupied any position with the union?

The Witness: He was their accredited union representative.

Trial Examiner: When was the last time that your membership and his position in that regard coincided?

The Witness: I believe it was January of this year.

Trial Examiner: Of 1955?

The Witness: Yes. [100]

* * * * *

Cross Examination * * * * *

Q. (By Mr. Nicoson): Do you know where the union has its office, 2288 has its office?

A. Not now. I'm not sure, used to be at North and Union.

Q. Do you know where it was in 1954?

A. No, I don't.

Q. You were never in the office in 1954?

A. No.

Q. You never saw Mr. Knight doing anything then in the union office in 1954? A. No.

Q. You never saw Mr. Hermeyer doing anything in the union office in 1954? A. No.

Q. You say Mr. Matzko is the accredited union representative of Local 2288. What does that mean?

A. He is the representative who comes around, sees that the [103] men are in the union. That the

(Testimony of Alexander W. Hardy.)

union contract is abided by and that the dues are paid.

Q. What does it mean when you say he is the accredited union representative?

Trial Examiner: I think he has just testified to that.

Q. (By Mr. Nicoson): What does the word "accredited" mean?

* * * * *

Trial Examiner: I certainly think it's much more important to determine what this union representative has done rather than the language that this witness has used, but he did use it and I will permit the question.

* * * * *

Trial Examiner: I will take the answer to the question and see how far we get along. If it gets involved in anything, I will know what my obligation here is.

Do you know the definition of the word "accredited"?

The Witness: I can use accredited but I don't know whether I can define it. [104]

* * * * *

Q. (By Mr. Nicoson): Did I understand you to testify that Mr. Matzko was no longer with the union?

A. No longer comes to our yard. We have a new representative.

Q. I see, and you don't know whether Mr. Matzko is any longer in any capacity with this

(Testimony of Alexander W. Hardy.)

union or not? A. Only from hearsay.

Q. Now, do you know as a matter of fact whether Mr. Matzko had any connection with this union in 1954 during the month of November?

A. Yes, I do.

Q. What are the facts that led you to make that statement?

A. Mr. Matzko was calling on us and he had a union paper showing that he was the representative.

Q. He had some sort of a document, did he?

A. Yes.

Q. You do not know then whether or not Mr. Matzko's document [105] had been lifted during the month of November, 1954, do you?

A. No.

Q. You do not know that he had any such document in November of 1954? A. No.

* * * * *

Q. (By Mr. Nicoson): Mr. Hardy, when was it that you saw these papers with Mr. Matzko, you said Mr. Matzko had which showed him being the union representative?

A. I don't recall that I asked him for them over, he showed them once or twice during the four years.

Q. At the beginning of your relationship?

A. Approximately. [106]

* * * * *

Q. (By Mr. McCormick): Do you recall the date of the conversation that you referred to in

(Testimony of Alexander W. Hardy.)

direct testimony between yourself and Mr. Matzko in connection with the discharge of Mr. Tooze?

A. No. [107]

* * * * *

Trial Examiner: On this occasion when Mr. Matzko discussed Mr. Tooze's separation or discharge, did the subject of union membership or the subject of the union come up at all in the conversation? [110]

The Witness: Yes.

Trial Examiner: Who said anything about it?

The Witness: Mr. Matzko.

Trial Examiner: What did he say?

The Witness: Said Mr. Tooze was not a member of 2288. [111]

* * * * *

DON FRANK TOOZE

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Weil): What is your full name?

A. Don Frank Tooze.

Q. Your address?

A. 4352 Locustdale, El Monte.

Q. Have you ever been employed by W. B. Jones Lumber Company? A. Yes.

Q. When were you hired?

A. I was hired October 28, 1954.

Q. Who hired you? A. Alex Hardy.

(Testimony of Don Frank Tooze.)

Q. What work did you do there?

A. I was hired as a stacker driver, forklift operator.

Q. When you were hired, was there any mention made of the union? A. None.

Q. After you were hired, when was the union first mentioned to you and by whom?

A. November 3rd, I believe, a union representative came to me during the lunch hour and had a conversation with Alex which I do not know but I saw Alex point to three or four new men and then Matzko—— [114]

Mr. Nicoson: Just a minute, I don't like to interrupt but here I go, he is telling about something he didn't hear. He talked about a union representative which he has not established or not identified. I move to strike his answer as not being responsive, no proper foundation having been laid and hearsay.

Mr. McCormick: I join in that objection on the same grounds.

Trial Examiner: I will reserve ruling for a moment.

The individual you refer to as the union representative, do you know his name?

The Witness: Yes, sir.

Trial Examiner: What is his name?

The Witness: John Matzko.

Trial Examiner: I deny the motion. Continue with your testimony.

The Witness: He came over and before we got

(Testimony of Don Frank Tooze.)

into a conversation, I said to him that I was going in the back yard and he could see me back there, that I had to go back to work and which I did. I was in the back yard operating the—I believe I was operating the stacker. The gentleman come up to me——

Trial Examiner: Which gentleman?

The Witness: Well, the one that, Mr. Matzko.

Trial Examiner: Why don't you tell us Mr. Matzko?

The Witness: Well, he introduced himself, showed me his identification, stating that he was the representative of the [115] Lumber and Saw-mill Workers' Local 2288 and that I said to him, before you, before you start in, there's a little situation I want to explain to him. I told him that I had worked for Pope and Talbot, Oakridge, Oregon.

That I was a member of the local union up there and that I left. I left, that I was involved in charges filed by the union up there and I was tried on charges of aiding and abetting a revolutionary organization which I was found guilty on.

In April of that year, I quit Pope and Talbot and went to Inneman and Poulson which they were a CIO organization who, in turn, they sold out to the Georgia Pacific Company.

Trial Examiner: You are telling all this to Mr. Matzko?

The Witness: Yes.

Trial Examiner: All right, go ahead.

(Testimony of Don Frank Tooze.)

The Witness: That is all my conversation to him.

Trial Examiner: Go ahead.

The Witness: They sold out to Georgia Pacific and I went to work for the Portland Meadows Amultnomah Kennels Club. And that, those were strictly seasonal jobs and then I came down here and started to work.

I even told him the fact I was going to get married at the end of November. We went into a discussion about the charges and he said to me that if what I told him was true that he would have to write a letter to the local union at the Willamette District Council to see just what the situation was [116] and to verify everything I had told him. If it was so, he said, if it was so that he would have to pull me off the job and our voices began to raise at this time and I asked him, "Doesn't the Taft-Hartley Law protect me?"

He says, well, he should know more about the Taft-Hartley Law than I would and I said he ought to.

At which time, the latter part of this conversation, there was a colored boy, name of Bob, worked for the company. He took in the latter part of this conversation and I asked Bob if he thought the union could pull me off the job. He said he was inclined to believe that the union could.

Mr. Matzko said he would write the letters to the respective union or, the Willamette District

(Testimony of Don Frank Tooze.)

Council, and verify what I had told him and that was about the end of our conversation.

Q. (By Mr. Weil): Did you have any further conversation with anyone representing the union?

A. Oh, yes.

Q. When did you next converse with any union representative?

A. I believe it was the following Wednesday. No, no, I took the rest of the afternoon, this particular afternoon off, went directly over to the Regional Director's office of the CIO, Mr. DeSeltzer, explained the entire situation to him just as I did to Mr. Matzko, and he suggested that I go see Mr. Knight and gave me his card as a reference. I called Mr. Knight from Mr. DeSeltzer's office who was not in at that time but would be back [117] between 3:30 and 4:00, something like that. At this particular time some employer was over there and I went over to the union hall of 2288 and saw Mr. Knight.

Q. Was anyone else present when you saw Mr. Knight?

A. I went up there, when I first went in the union hall there, I asked the girl for Mr. Knight and Mr. Knight was there. He come out and we went into his office at this particular time.

Q. Was there anyone else present in his office?

A. Later on, yes.

Q. Not at the beginning of the conversation?

A. No, not at the beginning of the conversation.

(Testimony of Don Frank Tooze.)

Q. Will you tell us, did Mr. Knight introduce himself or did you know who he was?

A. He did not introduce himself other than the girl went and got Mr. Knight and he came out. I introduced myself.

Q. What was the conversation you had in Mr. Knight's office?

Mr. Nicoson: Objected to on the ground it calls for a conclusion of the witness, hearsay as to this respondent, no proper foundation having been laid as to who Knight is.

Trial Examiner: I overrule the objection. You may have to connect it up. I have not made up my mind as yet whether there is enough in the record as to that but I will take the conversation. Go ahead.

The Witness: The conversation in Mr. Knight's office, I showed him Mr. DeSeltzer's card and told him that he advised [118] me to see him and explained who I was and told him exactly the same situation that I told Mr. Matzko and Mr. DeSeltzer about the charges and trials in Oakridge, Oregon and being found guilty on those charges and that from hearsay of what the penalties were to be, that I had never received any official notice of what the penalties were or just what the situation was or even if I was guilty or not.

I told him that I had seen Mr. DeSeltzer. He said he didn't like it, what was my idea of seeing Mr. DeSeltzer when the AFL was the representative of the Jones Mill. I told him that I didn't

(Testimony of Don Frank Tooze.)

trust the AFL's word or the CIO's. I wanted to get the information and I go to various people and get it. He didn't like it and stated it as such.

At that time Mr. Matzko came into the office. We shook hands and I told Mr. Matzko that I was talking to Mr. Knight here about my situation and that a little bit more conversation took place which I just don't remember very much right now.

Mr. Knight told Matzko to give me a work permit for the month of December—no, November, and which next Friday come in and get my work permit and he would see what the situation was by having these letters written up to the local union in Oakridge, Willamette District Council, to Eldon Kraal which was one of the officers up there, find out just what the situation was.

At this time he didn't say whether he would put me off the [119] job or not. As to what I can recall, he did say he would help me out as much as he could and that is about the end of the conversation there.

Q. (By Mr. Weil): Did you have any further conversation with Mr. Knight at any time?

A. Yes.

Q. When did you next have a conversation with him?

A. I believe it was a week after the following Friday. I'm not sure on this now but it was on—

Trial Examiner: Before you get into that, were you working during this period?

The Witness: Yes, I was.

(Testimony of Don Frank Tooze.)

Trial Examiner: Did you have a temporary permit?

The Witness: No.

Trial Examiner: Didn't Mr. Matzko give it to you?

The Witness: No, told me to come in the following Friday to pick up the work permit.

Trial Examiner: Was this the occasion when you had this next conversation?

The Witness: Yes.

Trial Examiner: All right, go ahead.

The Witness: I returned on, I believe it was, a Friday to get the work permit. I went into the union hall and asked the girl for a work permit and she asked me if I was a member of the union. I told her, no, that that was one of the situations [120] I wanted to find out about and she asked me if my name was Tooze. I told her yes. She left and went back to the back office and got Mr. Knight who came out front.

Q. (By Mr. Weil): Was anyone else present besides you and the girl and Mr. Knight?

A. Yes, Mr. Oyster was.

Q. Mr. Oyster, did he go with you?

A. Yes, he did. He went down to the union hall with me.

Q. Tell us what was said.

A. Mr. Knight came out of his office and he said, "We couldn't do much for you, Tooze. You are not a member in good standing."

And then he took out from underneath the table

(Testimony of Don Frank Tooze.)

or whatever you want to call it, counter, a folder of letters and showed me three letters that he had received, one from Eldon Kraal, Willamette District Council, one was a letter written by Purscell, the financial secretary of the local union at Oakridge, and another document that was prepared by the Hearing Board, the Board of the hearing of my trial. I had read all these and offered to pay my dues then.

Trial Examiner: To Mr. Knight?

The Witness: Mr. Knight, yes. They refused. I asked about my work permit. They did not issue me a work permit because I was not a member in good standing.

Trial Examiner: Who said that? [121]

The Witness: Mr. Knight.

Trial Examiner: Mr. Matzko was there at this time?

The Witness: Yes, he was at this time. I offered to join the union over again and Mr. Knight said that I couldn't become a member twice. I asked him why. He never did answer me.

I asked him, "Doesn't the Taft-Hartley Law protect me?"

When I said "Taft-Hartley Law," he wheeled around and walked away and as he was walking away, he said, "Don't talk Taft-Hartley Law to me."

Mr. Oyster then went in back, Mr. Oyster who took in part of this conversation went back and got his work permit and I told him that I would meet

(Testimony of Don Frank Tooze.)

him out in the car and I left and went out in the car.

Q. (By Mr. Weil): During that conversation did Mr. Knight give you any documents?

Trial Examiner: He said—you mean to keep?

Mr. Weil: Yes.

The Witness: Oh, no.

Q. By (Mr. Weil): Did he at any subsequent time? A. Mr. Knight did not, no.

Q. Did Mr. Matzko? A. Yes.

Q. When?

A. Well, Mr. Matzko came to the mill there once, well, it was the day that I was discharged and he drove up in the back yard [122] where I was working at the time. He called me over to him. I went over there and he handed me three documents which were copies of these letters that were on file in the union's office. I read them and handed them back to him and he handed them back to me and told me to keep them that they were mine.

Q. (By Mr. Weil): Do you have those documents with you? A. Yes.

Q. May I see them, please?

Are these the exact documents that he handed you? A. Those are the exact documents.

Trial Examiner: Mr. Weil, do you contend there is any union shop agreement here, lawful or unlawful?

Mr. Weil: I don't contend an unlawful shop agreement here.

(Testimony of Don Frank Tooze.)

Trial Examiner: Any union shop agreement here?

Mr. Weil: I have considered it irrelevant whether there is or is not since the circumstances under which this man was discharged could not have been legalized by any agreement.

Trial Examiner: All right. So what are those documents going to establish?

Mr. Weil: These documents are going to establish, well, in the first place, they were handed, inasmuch as they were handed this witness by a union representative, one of them bears an address to Mr. William H. Knight, B.R., which I believe the Board can and you can take judicial notice as the common abbreviation of business representative, Local 2288, [123] and I think, among other things, these documents establish——

Trial Examiner: The whole point I make is this, if this witness' testimony is credible and found to be the fact, it would be abundantly plain, it seems to me, that he had been discharged for some reason or other than the failure to pay dues. I make that proviso but if you want to try these documents, let's see where we get.

Mr. McCormick: That observation, if the Court please, was made as to the union, not the employer?

Trial Examiner: Well, he wasn't working for the union, you know.

Mr. McCormick: There is no testimony upon which the remark can stand as to the employer, if the Court please.

(Testimony of Don Frank Tooze.)

Trial Examiner: Well, that may be. My principal point here was to try to avoid cluttering the record with documents that probably wouldn't help any side at all or add anything to the case.

Mr. Weil: The documents tend to establish, I believe, the actual reason why the discharge was effectuated. The pleadings do not contain general denials on behalf of the union. I have no idea of the defense.

Trial Examiner: You got testimony prima facie as to a proffer of dues and refusal. Go ahead.

Mr. Weil: I have had marked General Counsel's Exhibits 4, 5 and 6 for identification, the documents referred to by the [124] witness in his testimony. General Counsel's 4 purporting to be a copy of a letter dated November 8, 1954; General Counsel's 5, a copy of a document purporting to be a letter of November 12, 1954, both letters addressed to William H. Knight, Business Representative, Local 2288; General Counsel's 6 for identification, a document purporting to be an excerpt from the minutes which is referred to in G. C. 5.

I would like to offer these at this time.

Trial Examiner: Any objection?

Mr. Nicoson: No objection.

Mr. McCormick: No objection.

Trial Examiner: They will be received.

(Thereupon the documents above referred to were marked General Counsel's Exhibits Nos. 4, 5 and 6 and were received in evidence.)

[See pages 218-221.]

(Testimony of Don Frank Tooze.)

Q. (By Mr. Weil): Did you have any further conversation at this time with Mr. Matzko?

A. We are still having a conversation at this particular time. He handed me these documents and told me that he's going to have to pull me off the job. I asked him why and if he'd let me work until Friday.

He says, no, he was supposed to pull me off Monday and couldn't make it. He says, "I'm going to have to pull you off the job, going to have to see Jones to pull you off the job."

I says, "I want to see Jones myself." [125]

In which I got on the stacker and drove around to the office and parked the stacker which at the time some of the fellows working were on lunch hours and which Alex also was. I called Alex over to the side and told him that Matzko was pulling me off the job.

Mr. Nicoson: I object to that as being out of the presence of any purported representative of the respondent union on the ground it's hearsay. I move to strike it on that ground.

Q. (By Mr. Weil): Was Mr. Matzko present when you talked to Alex? A. Yes.

Trial Examiner: I deny the motion.

Q. (By Mr. Weil): Proceed.

A. Alex came over. I told him that the union was pulling me off the job. Alex wanted to know why. Matzko told him I was not a member in good standing and that he would have to pull me off the job.

(Testimony of Don Frank Tooze.)

Alex asked him if I couldn't work for the rest of the day.

Matzko said, "No."

Alex figuratively speaking hit the overhead. He was sore. He says, "That is what I like about the God dam unions. You have to pay a man eight hours for four hours pay."

Matzko interrupted him at this time and told Alex you don't have to pay eight, pay me four hours. Alex told me he would give me the full eight hours pay. He said something [126] about over-time which I don't recall.

I believe at this point Matzko told him he was going to have to pull me off the job and Alex said, "O.K."

I believe Matzko left at that point, I'm not sure. He left, anyway.

Trial Examiner: Do you remember the date of that conversation?

The Witness: The 17th.

Trial Examiner: Of what?

The Witness: November.

Trial Examiner: What year?

The Witness: 1954.

Q. (By Mr. Weil): After Matzko left did you continue your conversation with Alex or did you have any further conversation with Alex?

A. Yes, I asked Alex if I could see——

Mr. Nicoson: Objected to on the ground hearsay as to the respondent.

(Testimony of Don Frank Tooze.)

Trial Examiner: I will take it as to the company. Go ahead.

The Witness: I asked Alex if I could see the bookkeeper as I wanted to know the interstate commerce trade of the company. Alex said that the bookkeeper was too busy to find that information out and I believe I left after that. I came directly up to the office here of the National Labor Relations Board. [127]

Q. (By Mr. Weil): Did you have any further conversation with Alex that day?

A. Yes. I left the company, came directly to the National Labor Relations Board here. In which I was interviewed.

Trial Examiner: Don't tell us what happened here.

Mr. Weil, you don't have to go into all the details of this witness' experience here at the Board and so on. Let's hit the spots you feel are necessary.

Mr. Weil: I asked the witness to testify about the further conversation that day with Alex.

Q. (By Mr. Weil): How did you talk to him, in person?

A. No, I called him by phone.

Q. Have you ever spoken to Alex by phone before? A. Yes.

Q. Did you recognize his voice? A. Yes.

Q. What was the conversation you had with him?

(Testimony of Don Frank Tooze.)

Mr. Nicoson: Objected to on the ground hearsay as to this respondent.

Mr. McCormick: I join in that objection, hearsay as to the employer.

Trial Examiner: I will take it as to the company.

The Witness: I asked Alex if Jones had heard about it.

He said, "No."

And I asked Alex how Jones would take it and if I got [128] squared away with the union if I could come back to work.

He says, "Yes, Don," he says, "get something in writing either from the union or from the National Labor Relations Board and come back to work."

And I told Alex that the company could fire me for any infraction of the rules and Alex said, "Don't worry about that. The company is not firing you for anything like that. All we want you to do is get something in writing from either the union or the National Labor Relations Board if you do come back to work."

He wished me good luck and hung up.

Trial Examiner: Who was your boss at that plant?

The Witness: Immediate boss?

Trial Examiner: Well, you can tell me that if you want.

The Witness: Alex was my immediate boss.

Trial Examiner: What did he do to boss you?

The Witness: Gave me various orders to put up.

(Testimony of Don Frank Tooze.)

Trial Examiner: The Alex you have been referring to, is he the preceding witness, the gentleman who testified before you?

The Witness: Yes.

Trial Examiner: Did you have any further conversation at any time with Alex?

The Witness: Yes. The next day I reported to Alex at approximately 8:00 o'clock in the morning, told him that I wasn't dressed for it but I had my working clothes out in the car. [129] Reporting for work.

He asked me if I had anything in writing from the union or the National Labor Relations Board. I told him, no, and that I had a copy of the Taft-Hartley Law in which I'd like to have him read it. I took it out of my coat pocket and laid it in front of him and he refused to see it, the law, at that time.

During this conversation there was a girl working behind the desk there. I don't know her name. I believe she heard part of this conversation. I told Alex that there's a possibility I'd have to file charges against the company to protect my rights.

Trial Examiner: That completes the conversation?

The Witness: That is just about it.

Trial Examiner: All right, go ahead.

Q. (By Mr. Weil): Did you thereafter have any further talk with any representative of the company or of the union?

A. Yes, I had. I believe it was, I went down to

(Testimony of Don Frank Tooze.)

the company's office to pick up my check. I saw Alex at the counter in the office which I believe he notified me that Mr. Moore wanted to see me and Mr. Jones.

Alex, myself and Mr. Moore, we went into Mr. Jones' office. We had a conversation there. The fact, what the trouble was——

Mr. Nicoson: Object to what was said in there on the grounds hearsay as to this respondent.

Trial Examiner: I will take it as to the company. Go ahead. [130]

The Witness: Mr. Jones tried to advise me and find out if I had offered to pay my dues. I told him I had and he thought I was a good worker and he suggested I go back and cash my check and go back down to the union hall and offer to pay my dues again and, or, join the union over again. I told him I would and I have already tried to. We shook hands and wished each other the best of luck and I believe I left at that time. There was probably some other conversation which I don't remember at this time.

Trial Examiner: Do you recollect whether you discussed with Mr. Jones the reason why your dues had not been accepted, was that discussed?

The Witness: As I said that I had explained to Mr. Jones just partially what the circumstances were.

Trial Examiner: Tell about it.

Mr. Nicoson: May my objection go to that, your Honor, as hearsay?

(Testimony of Don Frank Tooze.)

Trial Examiner: Yes, as to the union, you are correct. I'm taking this as going to the company interests only.

The Witness: I told Mr. Jones I was involved in a jurisdiction election between the CIO and AFL in Oakridge, Oregon, and I was a staunch organizer for the CIO at this particular time and after the election was over with that the AFL had won the election and that the charges were filed against me for aiding and abetting a revolutionary organization and I [131] was supposedly found guilty but I never received any notice.

Trial Examiner: By "revolutionary organization," so I may be straight, do you mean dual unionism? Do you mean organizing for another union?

The Witness: What the union means, I don't know.

Trial Examiner: You used the term "revolutionary organization"?

The Witness: The union used the term, not me.

Trial Examiner: What context was it used in?

The Witness: Contest?

Trial Examiner: Context?

The Witness: The fact that I was trying to swing the local men over to the CIO.

Trial Examiner: All right, I understand now. Go ahead.

Q. (By Mr. Weil): Did you have any further conversations after this with any representative of the union?

A. Yes, when I left Mr. Jones' office, I went in

(Testimony of Don Frank Tooze.)

my car, drove through the yard, went down to the far end of the yard what we referred to as a triangle which triangle——

Q. We won't go into that. Did you go from there down to the union office? A. Yes.

Q. Anybody go with you? A. Mr. Oyster.

Q. Whom did you see at the union office? [132]

A. Mr. Knight.

Q. Anyone else?

A. The girl first and Mr. Knight.

Q. What was the conversation there?

A. I asked the girl if I could see Mr. Knight. She left and came back and said Mr. Knight was indisposed at which time Mr. Knight comes wandering out of his office and I told the girl I had come down here to pay my back dues and she said she couldn't accept them. At this point Mr. Knight came over to the counter.

I told her that I wanted to join the union over again at which time Mr. Knight interposed there and said I couldn't join the union again, that I couldn't become a union member twice. The fact that I was already a member of the union, I couldn't join over again.

I asked him what in the devil he meant by that, that he couldn't show me in the constitution or by-laws anything to that effect.

He says, "Well, take my word for it, you can not join the union over again, you are already a member of the union but you have no withdrawal card.

(Testimony of Don Frank Tooze.)

We can not accept your union dues down here for what you owe another union."

I offered to pay these particular dues and I offered to pay my initiation fee and additional dues and I had the money with me to do so. He absolutely refused to accept the money [133] whatsoever.

Q. Did you have the money in your hand?

A. Yes, I believe I did.

Q. Do you recall anything further of that conversation?

A. He says, well, you should have gotten in touch with me before I filed charges, unfair labor charges against the union. At which time I believe I just ignored him and walked out. I don't remember.

Q. Have you since that time had any conversations with any representatives of the union?

A. AFL, no.

Q. Have you since that time had any conversations with any representative of the company?

A. No, not that I can remember.

* * * * *

Cross Examination

Q. (By Mr. Nicoson): Mr. Tooze, have you ever held membership in 2288?

A. No, I can't say I did. [134]

* * * * *

Q. Now, at the time you were having these conversations with Mr. Knight about the trouble that

(Testimony of Don Frank Tooze.)

you were or had had up north, is it not a fact that you were delinquent in your dues payments?

A. Yes.

Q. You were delinquent for a period of about six months, weren't you, at that time?

A. I don't recall.

Q. Well, you do recall that it was more than three months?

A. Well, from the total amount of dues I owe I guess so, I don't know.

Q. Do you recall when these charges were filed against you up north at Oakridge, Oregon?

A. Do I recall them?

Q. Yes, about the date?

A. No, I don't. I believe it was in, it was in March, I'm not sure, though.

Q. That would be in March of 1954? [135]

A. I believe so, I'm not sure.

Q. Or it wasn't 1953, was it?

A. Well, '54, yes.

Q. After the charges were filed against you, I take it these charges were filed when you were in the Carpenters' local in which you held membership at that time, that is, the charges, we are talking about?

A. Lumber and Sawmill Workers' Union.

Q. All right, what local, 2453?

A. I believe so.

Q. 2453. Then after the charges were filed in November, 1954, you discontinued paying dues into Local 2453 at or about that time, didn't you?

(Testimony of Don Frank Tooze.)

A. I had a credit against my dues.

Q. Yes. But I mean——

A. I didn't pay any more after I left, no.

Q. Is that right, after the charges were filed you never made another payment to 2453?

A. Yes, deducted out of my severance pay.

Q. When was that deduction made?

A. I left in April and I got my last check in April and I noticed on my statement that union dues were withheld.

Q. You were working under a union contract that provided for dues check-off at the time?

A. If we wanted it such.

Trial Examiner: What? [136]

The Witness: I said if we wanted it that way.

Q. (By Mr. Nicoson): When you signed a written authorization permitting the company to take out the dues for you? A. Yes.

Q. So then that was the last dues payment that you made to the union Local 2453, is that right?

A. I believe so. That would put it approximately at the end of April, 1954.

Q. When you left that local or, rather, when you stopped paying dues to that local, did you thereafter pay dues to any other Carpenters' local at any place? A. Not that I recall.

Q. When you were talking with Mr. Knight, you said that you offered to pay him your dues. How much money did you offer to pay?

A. Seventeen and a quarter.

Trial Examiner: It was what?

(Testimony of Don Frank Tooze.)

The Witness: Seventeen and a quarter.

Trial Examiner: \$17.25?

The Witness: Yes.

Q. (By Mr. Nicoson): Did you show the money to Mr. Knight?

A. The first time, no.

Q. At any time?

A. Yes, I had money in my hand.

Q. And you had \$17.25 in your hand? [137]

A. I had far more than that.

Q. Now, this was in November and you offered to pay Mr. Knight \$17.25?

A. For the back union dues.

Q. For back union dues.

Trial Examiner: When you speak of "back union dues," do I understand you mean Local 2453?

The Witness: Right.

Trial Examiner: And your dues in this new organization that is new to you?

The Witness: Yes. I offered to pay these back dues.

Trial Examiner: Yes.

The Witness: Which they refused.

* * * * *

Q. (By Mr. Nicoson): Now, have you ever sent the sum of \$17.25 to Local 2453 in payment of delinquent dues? A. No. [138]

* * * * *

Q. And at that time you had no obligation to pay any dues to Local 2288, did you, that you knew of? A. I couldn't see why I couldn't.

(Testimony of Don Frank Tooze.)

Q. You didn't know of any reason that you should have? A. (No response.)

* * * * *

Q. (By Mr. Nicoson): Did you say anything to Mr. Knight when [145] you proffered \$17.25 that it should be accepted and remitted to 2453?

A. I believe I asked, he said he couldn't accept that. I asked him why he couldn't. Don't know just the exact words or just how it was but I do recall something to that effect.

Q. He said that that would be money of 2453 and that would have to be paid into 2453?

A. That is true. [146]

* * * * *

Q. Now, when you were at the window did you tell Mr. Knight how much money you were prepared to pay? A. I don't believe so.

Q. Did Mr. Knight ask you what you were prepared to pay? A. No. [149]

* * * * *

Q. (By Mr. Nicoson): Now when you were up north and charges were filed against you, those charges were in writing?

A. Typewritten, yes, sir. [151]

Q. Were you notified of a trial? A. Yes.

Q. You came to the trial? A. Yes.

Q. You gave evidence? A. Yes. [152]

* * * * *

ROBERT OYSTER

a witness called by and on behalf of the General

(Testimony of Robert Oyster.)

Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Weil): Give us your full name and address.

A. Robert Oyster, home address, 34 Beach Road.

Trial Examiner: Los Angeles?

The Witness: Los Angeles, staying at the Downtown Y.M.C.A.

Q. (By Mr. Weil): Have you ever been employed by the respondent company, W. B. Jones Lumber Company? A. Yes.

Q. When were you first employed there?

A. First of November.

Q. By whom were you employed?

A. Alex Hardy.

Q. In what capacity did you work, do you work there? A. I worked on the cutoff saw.

Q. Are you still employed there? A. No.

Q. Did you come to testify in this hearing voluntarily or were you subpoenaed?

A. I was subpoenaed. [166]

* * * * *

Q. Did you hear Mr. Tooze testify about the conversation at the union office before his discharge at which you were present? A. Yes.

Q. Do you recall that conversation?

A. In the hearing room or do I recall the conversation?

Q. Do you recall the conversation itself?

(Testimony of Robert Oyster.)

A. Parts of it, I was listening.

Q. Will you tell us as nearly as you recall what was said and by whom? A. In here?

Trial Examiner: No, no, go back to the union hall with Mr. Tooze and somebody else and tell us what happened and who was there.

The Witness: I went with Mr. Tooze to pay my union membership card and heard the conversation between Mr. Tooze and Mr. Knight and Mr. Tooze said that he wanted to join the union here if it was possible. And Mr. Knight said that he [167] would not, could not accept his moneys to join the union, that he was, he had some letters from up north that he was *errors* in his dues up north and that he wouldn't be acceptable as a union member here.

Trial Examiner: You mean in arrears?

The Witness: In arrears, did I say errors?

Trial Examiner: Arrears is what you mean?

The Witness: Yes.

Q. (By Mr. Weil): Do you recall any more of that conversation?

A. No, I don't recall anything more.

Trial Examiner: If you don't recall anything more, you really don't have to say anything more.

The Witness: All right, I don't recall anything more.

Q. (By Mr. Weil): Do you recall another conversation at the union office at which Mr. Tooze and Mr. Knight and others spoke at which you were present? A. Yes.

Q. That was after Mr. Tooze's discharge?

(Testimony of Robert Oyster.)

A. Yes.

Q. Do you recall who was present at that conversation?

A. Mr. Tooze, myself, one or two secretaries and Mr. Knight and Mr. Matzko, I don't know the name.

Trial Examiner: We have had a dozen different pronunciations. The reporter will get it correctly.

Q. (By Mr. Weil): Tell us what was said at that conversation [168] as nearly as you can recall.

A. Mr. Tooze offered——

Mr. Nicoson: Just a minute. I object to the conclusion. He may say what Mr. Tooze said, I don't mind that.

Trial Examiner: Tell us what Mr. Tooze said.

The Witness: Mr. Tooze asked Mr. Knight if he could pay the dues that he owed to Mr. Knight and the local, the local union, and Mr. Knight said that he couldn't accept them, could not accept them, or would not accept them, I don't know. He wouldn't accept the moneys.

Don asked him, Mr. Tooze asked him if he could join the union and Mr. Knight said, "No, we can't have you as a member."

Q. (By Mr. Weil): Do you recall any more of that conversation? A. No, no more.

Q. Going back to the first conversation at the time of that conversation at the visit to the union hall, did you get a work permit?

A. Yes, I did.

(Testimony of Robert Oyster.)

Q. Did Mr. Tooze ask for a work permit at that time? A. Yes, he did.

Q. Did he get one if you know?

A. No, he didn't.

Trial Examiner: Can you tell us what was said on the subject?

The Witness: Yes. Mr. Tooze asked if he might have a [169] work permit to carry him through until he could get squared away up north, squared away.

Trial Examiner: Asked whom?

The Witness: Asked Mr. Knight.

Trial Examiner: Did Mr. Knight make a reply?

The Witness: Yes, he said he could not give him a work permit. [170]

* * * * *

Trial Examiner: You stipulate that the union is a labor organization within the meaning of the Act.

One other point is that about these two individuals, about their status. Can that be the subject of a stipulation?

Mr. Nicoson: Why, sure, what do you want to know about it?

Mr. Weil: Mr. Knight was the business representative and Mr. Matzko was a representative with the right to speak for the union in this matter and did.

Mr. Nicoson: Certainly, I will also give you Mr. Matzko's name, if you like, M-a-t-z-k-o.

Trial Examiner: It's a matter of your determination whether you need anything more on that

score. It's a question to accommodate Mr. McCormick whether he wishes to be present when the evidence goes in.

Mr. Weil: If counsel will stipulate that Mr. Matzko's name is M-a-t-z-k-o, and he was, is not now, but was during the entire year 1954 a representative of Local 2288 and——

Mr. Nicoson: I will stipulate this that Matzko was a [172] union representative and, to-wit, an assistant business agent during the month of November, 1954. I will also stipulate that Mr. William H. Knight was senior business agent of Local 2288 during the month of November, 1954.

Trial Examiner: Throughout the month of November, 1954?

Mr. Nicoson: From the 1st to the 30th, inclusive.

Mr. Weil: Will you stipulate they had the authority to take the action which the evidence indicates they took?

Mr. Nicoson: Of course not. [173]

* * * * *

WILLIAM B. JONES

a witness recalled by and on behalf of the Respondent Company, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

Q. (By Mr. McCormick): State your name.

A. W. B. Jones.

Q. Mr. Jones, what was your connection during 1954 with the respondent employer?

(Testimony of William B. Jones.)

A. President of W. B. Jones Lumber Company.

Q. You have heard the testimony of Mr. Tooze referring to a conference or a meeting with Mr. Moore, Mr. Hardy, yourself and Mr. Tooze in your office approximately a week following this separation from employment in your company?

A. I did.

Q. And that date would be fixed about the 24th of November? A. Yes.

Q. Mr. Jones, I show you General Counsel's Exhibits for identification, 4, 5 and 6 and ask you if you have ever seen those papers.

A. I can't identify the papers. Tooze came in my office.

Q. Answer the question. Did you ever see them?

A. I can't identify the papers as being the papers that were put on my desk.

Q. Would you just quickly scan each paper and advise the [176] Court whether you have ever read the contents in each paper on each exhibit?

A. I didn't read that.

Q. You didn't read that, referring to General Counsel's Exhibit 4?

A. No, right. I didn't read that.

Q. Referring to General Counsel's Exhibit 5?

A. I didn't read that.

Q. Referring to General Counsel's Exhibit 6.

Mr. Jones, at that conference did Mr. Tooze advise you as to the reason that Mr. Matzko requested separation from your employment?

A. Mr. Tooze came in the office with Mr. Moore

(Testimony of William B. Jones.)

and Mr. Hardy. Hardy told me previously there was some trouble with the union and one of our men. He was a good man he wanted to keep. He came in the office, he was coming down to get his check. I said, "Bring him in, let's see if we can get it straightened out."

They came in the office. I was introduced to Tooze and he started to tell me a long story about Oakridge and I said, "Let's not go into this big, long story. What's the trouble?"

He had some paper he handed me.

I said, "I don't want to read a lot of papers, I don't have time. Do you owe back dues?"

He said, "Yes, I'm back in my dues." [177]

I said, "Well, we can't fight with the union. You have to go up and pay your dues and square yourself away. We want you back. Alex says you're a good man. We can't get in any controversy with the union."

And either before that time or during that time or after that time I telephoned Knight about it.

Q. Mr. Knight? A. Head of the union.

Q. What was said on that occasion by you and what was said by Mr. Knight?

A. I recall I asked Knight what the trouble with this fellow Tooze was. He was a good man. We needed this lift truck driver. And I said it's only a matter of \$21.00 or so, I remember. The figure, I could be off on the figure that he owes in back dues. He has a paper explaining what he has to do. All

(Testimony of William B. Jones.)

he has to do is pay those back dues and Knight says, yes.

So it must have been before or during the time that I was talking to Tooze because I told Tooze, "All you have to do is go up there and pay back dues. Why argue and fight about it? Go up and pay and go back to work and let's not have to talk."

That was just about the conversation. It took place within four or five minutes.

Trial Examiner: Do you remember whether it was before or after the discharge?

The Witness: After the discharge. He came down to get [178] his check. They are paid on a certain day.

Trial Examiner: I mean your telephone call to Knight.

The Witness: My telephone call to Knight was after the discharge. I think it was the same day that Tooze came in the office, right before or during the time Tooze was there.

I told Tooze, "All you have to do is pay your back dues. I talked to Knight. Get it paid up and go back to work and stop talking."

I didn't read the papers. He started to tell me a big, long story. [179]

* * * * *

WILLIAM G. BRALEY

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

(Testimony of William G. Braley.)

Direct Examination

Q. (By Mr. Weil): Will you state your name, please? A. William G. Braley.

Mr. Nicoson: William Brady?

The Witness: B-r-a-l-e-y.

Q. (By Mr. Weil): What is your address?

A. 730 Ardmore Avenue, Los Angeles 29.

Q. By whom are you employed?

A. W. B. Jones Lumber Company, Inc.

Q. What position do you hold with that company? A. Credit manager.

Q. As credit manager of W. B. Jones Lumber Company, what are your duties?

A. I handle all credit and collections for the company, [217] establishing credit and accounts receivable.

Q. In the course of those duties, do you keep records of the sales of your company to your customers? A. Most definitely.

Q. And what other records do you keep?

A. I keep all records on payments or non-payments, amount of sales, continuous records of what has been paid and what has not been paid but which they have charged against the account; what they have bought and so forth.

Q. What is the initial record made of a sale by your company? A. Invoices.

Q. Are the invoices posted to any other record?

A. The invoices are posted to the ledger sheet.

Q. From what record, if any, do you work?

(Testimony of William G. Braley.)

A. Both invoices and ledger sheets, primarily ledger sheets.

Q. You post the invoice to the ledger sheets?

A. I do.

Q. Do you have with you the ledger sheets for the Johnston Pump Company? A. Yes, sir.

Q. Will you get them out, please?

Mr. Nicoson: The Johnston Pump Company?

Mr. Weil: Yes, J-o-h-n-s-t-o-n.

May I see that please?

Trial Examiner: Do you want to show it to counsel, Mr. [218] Weil?

Mr. Weil: Yes, I wish to show it to counsel at this time.

Trial Examiner: All right, Mr. Weil, Mr. Nicoson has finished with it.

Mr. Weil: Thank you.

Mr. Nicoson: Have you had it marked?

Mr. Weil: Will you please mark this as General Counsel's Exhibit No. 7 for identification?

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 7 for identification.)

Q. (By Mr. Weil): Handing you what has been marked General Counsel's Exhibit No. 7 for identification, I will ask you if that document shows a record of sales invoiced during the year 1954?

A. Yes, sir.

Q. Are those sales columnized?

A. Yes, sir.

Q. Will you start with the first sale in 1954 and

(Testimony of William G. Braley.)

read down the amounts of each sale, down the column?

Now, prior to that; does that contain all of the sales to the Johnston Pump Company?

A. Yes, these are all charge sales.

Trial Examiner: Do you propose to have him read all of these entries into the record? [219]

Mr. Weil: I propose to have him read all of these entries into the record. I believe this is the quickest way.

Trial Examiner: I wonder if that is necessary? Do you want to discuss it with Mr. Nicoson for a moment?

Mr. Nicoson: May we go off the record.

Trial Examiner: Sure.

(Discussion off the record.)

Trial Examiner: On the record.

Mr. Weil: Will counsel stipulate that if asked, Mr. Braley would testify that the total sales of W. B. Jones Lumber Company, Inc., to the Johnston Pump Company, are approximately \$8503.81 for the year 1954?

Mr. Nicoson: I will stipulate to that as revealed by the exhibit, whatever the number is.

Trial Examiner: General Counsel's No. 7 for identification.

Mr. Weil: Yes, No. 7 for identification.

Trial Examiner: Do you propose to enter that?

Mr. Weil: I do not.

Trial Examiner: All right, it is available here if respondent's counsel wants to examine it.

(Testimony of William G. Braley.)

Mr. Weil: I would like to find out that the invoices are also available here.

Trial Examiner: All right, sir.

Q. (By Mr. Weil): Do you have with you the ledger sheet for [220] Stauffer Chemical Company?

A. Yes, sir.

Trial Examiner: I think, unless we encounter some circumstances which warranted a departure from the prior program, you might try to handle it the same way and Mr. Nicoson may go along with you, but that is entirely up to you.

Mr. Nicoson: I think that is a good idea. Have it marked for identification, so that we can follow that and show that we have looked at something.

Trial Examiner: Yes, I think so.

Mr. Weil: I will do so.

Trial Examiner: You can take them individually. Just mark it and why not take it up the same way as you did with the last one.

Mr. Nicoson: You mean mark it General Counsel's Exhibit No. 8?

Mr. Weil: It will be General Counsel's Exhibits Nos. 8 and 8-A.

(Thereupon the documents above referred to were marked General Counsel's Exhibits Nos. 8 and 8-A for identification.)

Trial Examiner: I take it you will show these to Mr. Nicoson?

Mr. Weil: As soon as I have identified them all, I will [221] show them to him.

Mr. Weil: This will be marked General Coun-

(Testimony of William G. Braley.)
sel's Exhibit No. 9 for identification, Wolf Range & Manufacturing Company.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 9 for identification.)

Mr. Weil: I am not writing the words "for identification" on them.

Trial Examiner: All right, the record will show that.

Mr. Weil: Mission Appliance Company——

Mr. Nicoson: That is No. 9?

Mr. Weil: No. 10.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 10 for identification.)

Mr. Weil: No. 11 is the Hammond Manufacturing Company, which has now been marked.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 11 for identification.)

Mr. Weil: No. 12 is the Mississippi Glass Company.

Mr. Nicoson: Mississippi what?

Mr. Weil: Mississippi Glass Company.

Mr. Nicoson: Mississippi Glass Company?

Mr. Weil: Yes, that is No. 12.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 12 for identification.)

Mr. Weil: Southern Heater Corporation, that will be No. [222] 13. There are—strike that.

(Testimony of William G. Braley.)

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 13 for identification.)

Mr. Weil: C. & M. Manufacturing Company——

The Witness: There are three sets on that one.

Mr. Weil: That will be General Counsel's Exhibit No. 14-A and 14-B.

(Thereupon the documents above referred to were marked General Counsel's Exhibits Nos. 14-A and 14-B respectively for identification.)

Mr. Weil: The next one is Modern Spring——

Mr. Nicoson: Modern Range?

Mr. Weil: Modern Spring; that will be General Counsel's Exhibit No. 15.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 15 for identification.)

Mr. Weil: Ducommon Metals & Supply Company——

Trial Examiner: What number is that one?

Mr. Weil: That is No. 16.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 16 for identification.)

Mr. Weil: National Supply Company is General Counsel's Exhibit No. 17.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 17 for identification.) [223]

Mr. Weil: And Empire Trailer Company will be General Counsel's Exhibit No. 18.

(Testimony of William G. Braley.)

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 18 for identification.)

Mr. Weil: Kroehler Manufacturing Company, that will be General Counsel's Exhibit No. 19.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 19 for identification.)

Mr. Weil: Columbia Pictures Corporation; that will be No. 20.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 20 for identification.)

Mr. Weil: Chrysler Motors; that will be General Counsel's Exhibit No. 21.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 21 for identification.)

Mr. Weil: Phelps Dodge Copper Products Corporation, that will be No. 22.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 22 for identification.)

Mr. Weil: And Morris D. Kirk & Sons, Inc., that will be No. 23.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 23 for identification.)

Mr. Weil: And Martinolich Consolidated Construction [224] Company——

Mr. Nicoson: Who?

(Testimony of William G. Braley.)

Mr. Weil: M-a-r-t-i-n-o-l-i-c-h Manufacturing Co., that will be No. 24.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 24 for identification.)

Mr. Weil: And Reynolds Electrical & Engineering Company, that will be——

Mr. Nicoson: Donald——

Mr. Weil: Reynolds Electrical & Engineering Company; that will be General Counsel's Exhibit No. 25.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 25 for identification.)

Mr. Weil: Mr. Examiner, as I recall, Mr. Merrill of Sprague Engineering Company testified to that company's purchases. Therefore, I will not put these on record.

Trial Examiner: As it will only take a moment, I do not see any harm in doing it.

Mr. Weil: Well, I haven't added it up yet, so I cannot give you the figures.

Trial Examiner: Well, what exhibit number are you up to now?

Mr. Weil: No. 25.

Trial Examiner: All right, go ahead.

Mr. Weil: May we go off the record? [225]

Trial Examiner: Yes, but before you do, General Counsel's Exhibits Nos. 7 through 25 for identification, what are they, those that you have just heard enumerated?

(Testimony of William G. Braley.)

The Witness: You mean what are they called?

Trial Examiner: Yes. What are they?

The Witness: Ledger sheets.

Trial Examiner: And each exhibit number refers to what?

The Witness: Ledger sheets of a particular account for the year 1954.

Trial Examiner: Have you heard the names as the General Counsel read them over?

The Witness: Yes.

Trial Examiner: And does each exhibit number as he read it correspond to the name of the customer?

The Witness: Yes, sir.

Trial Examiner: Go ahead. Well, you may go off the record.

(Discussion off the record.)

Hearing Officer: On the record.

I take it, gentlemen, that by agreement the stipulation that you entered into before, as to what this witness would testify to, in respect to General Counsel's Exhibit No. 7, you wish stricken from the record?

Mr. Nicoson: That is correct.

Mr. Weil: That is correct. [226]

Trial Examiner: All right, go ahead.

Q. (By Mr. Weil): Mr. Braley, have you had occasion to total the figures on General Counsel's Exhibits Nos. 7 through 25? A. Yes, sir.

Q. Would you give us your total of the figures on General Counsel's Exhibit No. 7 as to sales?

(Testimony of William G. Braley.)

A. Well, all these figures are through one running of the adding machine.

Mr. Nicoson: I am sure I will not check it.

Trial Examiner: Did you use the adding machine?

The Witness: Yes, and made these computations. On General Counsel's Exhibit No. 7 I get a total of \$8,197.70.

Q. (By Mr. Weil): What total do you get on General Counsel's Exhibit No. 8?

A. \$10,019.93.

Q. 83? A. 93.

Q. And on General Counsel's Exhibit No. 8-A?

A. \$200.92.

Q. No. 9? A. \$6,803.33.

Q. No. 10? A. \$14,415.13.

Q. No. 11? [227] A. \$18,662.20.

Q. No. 12? A. \$30,028.40.

Q. No. 13? A. \$8,274.67.

Q. No. 14? A. \$24,755.74.

Q. Yes, that was No. 14-A, and now No. 14-B?

A. \$1,979.20.

Q. No. 15? A. \$11,036.77.

Q. No. 16? A. \$19,705.88.

Q. No. 17? A. \$20,801.55.

Q. No. 18? A. \$17,418.17.

Q. No. 19? A. \$8,735.12.

Q. No. 20? A. \$11,531.97.

Q. No. 21? A. \$8,010.35.

Q. No. 22? A. \$4,192.64. [228]

Q. No. 23? A. \$14,263.83.

(Testimony of William G. Braley.)

Q. No. 24? A. \$26,915.99.

Q. And No. 25? A. \$7,344.72.

Q. Did you total these figures into a grand total? A. I did.

Q. What is that grand total?

A. \$282,943.79.

Mr. Weil: Thank you.

Q. (By Mr. Weil): Calling your attention to General Counsel's Exhibit No. 24 for identification, referring to the Martinolich Construction Company, I will ask you does that ledger sheet show on its face where the materials are shipped?

A. It does.

Q. Where were those materials shipped?

A. Hotel Last Frontier.

Q. In what city? A. Las Vegas.

Q. In what state? A. Nevada.

Q. Calling your attention to General Counsel's Exhibit No. 25 for identification, I will ask you if that ledger sheet [229] shows where the materials were shipped? A. No.

Q. It doesn't?

A. No; it shows that we shipped out of state.

Q. The goods you shipped out of state?

A. Yes, but not to where.

Q. Does it give an address for it, the Reynolds Electrical & Engineering Company? A. Yes.

Q. What address is that?

A. Post Office Box No. 352, Las Vegas, Nevada.

Trial Examiner: Did you make those entries yourself?

(Testimony of William G. Braley.)

The Witness: Yes.

Trial Examiner: And you took your information from what source?

The Witness: From the invoices.

Trial Examiner: And that is both with respect to the Last Frontier address that you gave and this last one?

The Witness: That is correct. [230]

* * * * *

Mr. Weil: Mr. Examiner, during the period of time we were off the record, I discussed with counsel the possibility of stipulating that some, or all of these companies were engaged in commerce to the extent of shipping their products out of state lines in excess of \$50,000.00 annually.

Trial Examiner: Each one \$50,000.00 or——

Mr. Weil: Each one \$50,000.00.

Trial Examiner: Go ahead.

Mr. Weil: Counsel indicated that he would enter into a stipulation that, if called to testify, representatives of the Stauffer Chemical Company, National Supply Company, Columbia Pictures Corporation, Chrysler Corporation and Phelps Dodge Copper Products Corporation, would testify that their respective companies shipped their products out of state of California of a value in excess of \$50,000.00 for each company.

Does counsel so stipulate?

Mr. Nicoson: I will so stipulate. [232]

Trial Examiner: \$50,000.00 for which period?

Mr. Weil: During the calendar year 1954.

Trial Examiner: Is that agreeable to you?

Mr. Nicoson: I accept that stipulation. [233]

* * * * *

GEORGE CROSSMOND FEE

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Mr. Garrett: What is your name counsel, please?

Mr. Weil: Paul Weil.

Q. (By Mr. Weil): What is your name?

A. George Crossmond Fee.

Q. And your business address?

A. 3272 East Foothill, California; Johnston Pump Company.

* * * * *

Q. (By Mr. Weil): What was your position with the Johnston Pump Company?

A. Assistant—I am administrative assistant to the general manager of the plant.

Q. What are your duties in that capacity?

A. Many and varied, general supervision or investigation in any department which is beyond the scope of an individual department; review of correspondence, review of daily invoices, [235] review of most of our price literature.

Q. In the course of your duties in the reviewing of invoices, do you review all the invoices for merchandise shipped from that company?

A. Yes, sir. I would say "yes" with possibly

(Testimony of George Crossmond Fee.)

exceptions where the manager calls attention to a particular item—I mean in a certain invoice he might find something that he wished in the group of invoices and it might by-pass me, infrequently.

Q. In the course of your job with these invoices, have you had occasion to note any invoices for shipments outside the State of California by your company?

A. Yes, sir. We make shipments outside the State of California.

Q. When a shipment is made, is there always an invoice made to cover it?

A. We invoice on the day of shipment. That is right.

Q. And does the invoice show for the company's purposes, that a certain shipment was made of a value—of a certain value?

A. Yes, sir.

Q. Does it show to what point that shipment was made?

A. Yes, sir.

Q. Do you have any such invoices with you?

A. Yes, sir, I do. [236]

Q. Do you have any invoices for shipments outside of the State of California?

A. Yes, sir, I do.

Q. May I see them, please?

A. These are shipments of invoices from some of our special buyers whereby a regular record is kept. In other words, not a consumer but a distributor type of individual.

Q. You usually sell through distributors?

(Testimony of George Crossmond Fee.)

A. We sell through distributors and dealers and on occasions, we sell direct.

Q. When you sell to a distributor, does your file contain invoices for each shipment made to that distributor?

A. Yes, sir, on any partial shipment against one of his orders.

Q. Have you had occasion to go over these invoices in the recent past?

A. I have reviewed these recently, yes, sir.

Trial Examiner: Well, just let us get it straight. The witness refers to five binders. All right, go ahead, sir.

Q. (By Mr. Weil): In the course of your reviewing all those, are you able to testify from your review of those, concerning the value of the shipments of your company to states in the Union, other than the State of California?

Mr. Garrett: That calls for a "yes" or "no" answer.

Trial Examiner: Well, he can answer "yes" or "no". [237]

The Witness: Yes, sir.

Q. (By Mr. Weil): What is the approximate value of the shipments out of the State of California? A. Covered by these invoices?

Q. Yes, covered by these invoices you have with you?

Mr. Garrett: Just a minute. I object. The best evidence is the invoices, of what is covered thereon.

Trial Examiner: Well, the invoices are the best

(Testimony of George Crossmond Fee.)

evidence. The question is whether you can lay a foundation for dispensing with their introduction in evidence.

Q. (By Trial Examiner): In whose custody are those invoices kept?

A. In our accounting department.

Q. In your accounting department?

A. Yes, sir.

Q. Had those invoices come to your attention previously as part of your duty?

A. Some of them, yes, sir.

Q. Where did you get these from?

A. From the accounting department.

Q. And in what are they kept in your accounting department?

A. Well, they are kept in our regular file container. For our special buyers, we maintain a manila type folder of all invoices for a given product. These date back to the beginning of what was our fiscal year, prior to a recent change [238] of ownership in our company, which would be the 1st of October.

* * * * *

Q. (By Mr. Weil): Let us follow the course of these invoices from the time they are made out. Who makes them out?

A. They are made out in the accounting department. The basis for the making of the invoices is the sale order, which originates in the sales department.

(Testimony of George Crossmond Fee.)

Q. Are they made out at the time that the shipment is made?

A. Yes, sir, at the time the material leaves the plant, the invoice is prepared.

Q. And then what happens to the invoices after they are made out?

A. They are mailed to the customer.

Q. What happens to the copies that you keep?

A. They are kept as our records and posted to our books. [239]

Trial Examiner: Mr. Weil, if I may interrupt. We have been through so much of this in this proceeding and apparently you do not seem to get what I mean by a foundation here.

There are certain circumstances, under which I will dispense with the need for the introduction of these records, and if that is your purpose, I would suggest you go ahead and lay a foundation, so that that would warrant an exercise of my dismissing them here for the purview of the statute.

Why would it be impracticable to introduce these invoices in evidence. They are here.

Mr. Weil: There are a number of—a large number of them and I was trying to avoid the necessity of marking each individual invoice and having it read.

Trial Examiner: I appreciate that, but if that is your purpose, I cannot take your statement to that effect.

Can you tell us offhand about how many invoices are involved in the folders you have got before you?

(Testimony of George Crossmond Fee.)

The Witness: I would say forty to sixty, sir.

Trial Examiner: Forty to sixty?

The Witness: Yes.

Trial Examiner: Do you know whether any of those are currently in use for any purpose?

The Witness: These are the company's permanent records, yes, sir.

Trial Examiner: Are any of them currently in use for any [240] purpose such as billing?

The Witness: No.

Trial Examiner: Returns, or whatever the case may be?

The Witness: No, sir.

Trial Examiner: Would there be any objection to leaving them here?

The Witness: I would prefer not to, sir.

Trial Examiner: Why would you prefer not to?

The Witness: They are the original documents of the accounting department. Most of the entries have been posted to the books.

Trial Examiner: Are there some that have not been posted?

The Witness: That is possible, yes, sir. I will look at them and determine that. They all appear to have been posted.

Trial Examiner: Well, I notice you looked at one book. Will you take a look at the other books and tell me if any of these have not been posted?

The Witness: That one has not been posted (indicating).

(Testimony of George Crossmond Fee.)

Trial Examiner: Some have not been posted you say?

The Witness: Some appear not to have been posted, yes, sir.

Trial Examiner: Is there any reason why you can't leave those that have been posted? [241]

The Witness: Well, I am not the custodian of these records and I would prefer to contact the custodian before answering that.

Trial Examiner: Do you know whether you would be able to leave them here for a period of say, two or three days?

The Witness: I see no reason why it would be objected to, but there again, I would prefer to ask the actual custodian of the records, sir.

* * * * *

Trial Examiner: Well, just tell us whether you can tell us approximately the value of the shipments, not what the value is, but whether you can tell us, of your own knowledge, what the value was?

The Witness: Yes, sir.

Q. (By Mr. Weil): Will you tell us what the value is?

Mr. Garrett: I make the same objection, your Honor. It is irrelevant, immaterial and incompetent and no proper [242] foundation has been laid. It isn't the best evidence and I object on the basis of the prior objection, which I do not believe has been changed in any way.

The witness has said he isn't the actual custodian of the records. * * * * *

(Testimony of George Crossmond Fee.)

Q. (By Trial Examiner): What is your knowledge based on?

A. A review of all invoices and prior experience. My prior job was actually in the sales department where I did reviewing of invoices from——

Q. Until when was that?

A. That was up until around the 15th of October, sir.

Q. Of 1954? A. Yes, sir. [243]

* * * * *

The Witness: Are you speaking of these particular records or all the records of the company?

Q. (By Mr. Weil): The total sales of the company in 1954, in interstate commerce. In other words, other than the State of California.

Mr. Garrett: Just a moment, your Honor, I think this is going to leave some confusion on the record.

Trial Examiner: I agree. Mr. Weil, I am confused now. You started with the records and went on to something else.

The Witness: I asked if he knew of his own knowledge as to these facts. In his answer, it became apparent that his own knowledge was based on these records.

Trial Examiner: On which records?

Mr. Weil: The total invoices, which he doesn't have here. [245]

* * * * *

Q. (By Mr. Weil): From your personal knowledge of the records you have before you, have you

(Testimony of George Crossmond Fee.)

determined the value of the shipments to the companies who are referred to in those records, during the year 1954?

Trial Examiner: Now, the records before you?

The Witness: I did not review each invoice in this record. I selected these records myself, because I knew these people were principal users of our product, volume users of our product. A brief review of the invoices confirmed what I already knew, that they were volume users.

Mr. Garrett: I ask that the answer go out as not being responsive to the question.

Trial Examiner: Well, I do not conceive it to be prejudicial. I will let it stand. I will deny the motion. I will agree it isn't responsive.

Mr. Weil: May I see the records, please? [246]

Trial Examiner: I think, Mr. Weil, you should identify these by exhibit numbers. I am not suggesting here that I am going to require you to introduce them in evidence, but we ought to know what we are talking about.

Now, he has already referred to five of these folders. Why don't you just mark lightly in pencil in order, "General Counsel's Exhibit No. 26, 27, 28, 29 and 30" for identification?

He has already referred to the folders and he has already identified them, and we will know what we are talking about then.

Now, the respondent's counsel can look through them and you can refer to them on the record, and in certain circumstances, on the basis of answers

(Testimony of George Crossmond Fee.)

that have been given, it may be that it would not be practicable, bearing in mind that this happens to be a completely neutral party, to tie up its records.

I might refer to Section 10 (b) which dispenses with the introduction of the records, providing that the respondent has sufficient opportunity to look through them.

Mr. Garrett: May I be allowed, at this time, your Honor, to see the exhibits?

Mr. Weil: I have marked them as follows:

The records for Ingram Brothers is General Counsel's Exhibit No. 26 for identification; the records for Big T. [247] Pump Company as General Counsel's Exhibit No. 27 for identification;

The records for Gilbert Pump Company, General Counsel's Exhibit No. 28 for identification;

The records for General Machinery Company as General Counsel's Exhibit No. 29 for identification;

And the records for E. W. Henkle, as General Counsel's Exhibit No. 30 for identification.

(Thereupon the documents above referred to were marked General Counsel's Exhibits Nos. 26 to 30 inclusive, for identification.)

Mr. Weil: I am handing them to counsel at the same time.

Trial Examiner: Have you totaled up the figures for any of those invoices in those folders?

The Witness: No, sir, I have not.

Trial Examiner: You haven't?

The Witness: No, sir, I haven't added them up.

Mr. Weil: That is what I was looking for, to see

(Testimony of George Crossmond Fee.)

if there were some big invoices in them that——

The Witness: There are some big invoices in there.

Q. (By Mr. Weil): I notice one in here for \$11,000.00; are there any for much over that, do you recall?

A. \$15,000.00 would be as much a shipment as we would make on a single invoice, due to limitations of our shipping [248] facilities.

Trial Examiner: We can go off the record for a few minutes while the respondent counsel looks through them.

Mr. Garrett: I will not be long here, sir.

Trial Examiner: Sure. Go ahead. We will go off the record.

(Discussion off the record.)

Trial Examiner: On the record.

The respondent union's attorney has looked through the folders which have just been identified as General Counsel's Exhibits Nos. 26 to 30.

Q. (By Mr. Weil): Do General Counsel's Exhibits Nos. 26 through 30, contain invoices which reflect shipments in value in excess of \$50,000.00 to your knowledge? A. Yes, sir.

* * * * *

Cross Examination * * * * *

Q. (By Mr. Garrett): Who is the actual custodian of these orders?

A. The custodian of the orders is Mr. Sneider.

Q. What is his position?

A. He is the comptroller. At the time that we

(Testimony of George Crossmond Fee.)

were talking about, he was the assistant treasurer of the Johnston Pump Company.

Q. Back in 1954? A. That is right. [251]

* * * * *

Q. These invoices you have are all reflecting the period of 1954?

A. Yes, sir, or what would be under the old Johnston Pump Company, the first quarter of the fiscal year in 1955. The fiscal year changed with the change of ownership too.

Q. I notice on those invoices that a good many of them show shipments in 1955 rather than 1954.

A. Well, the first of the fiscal year is on the bottom of the pile.

Q. Your estimate of totals is based upon all these invoices?

A. My review was principally for the 1954 period.

Q. Well, these particular records kept by the company, are all of them records of 1954 and 1955?

A. I did not understand that.

Q. The invoices involved in each one of these folders, covers the year 1955 and 1954 at the same time; is that correct? [252]

A. That is right.

Q. And it is your testimony that in totalling the 1954 figures exclusively, it is in excess of \$50,000.00; is that correct?

A. Yes, sir. [253]

* * * * *

ROBERT H. LANCASTER

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Weil): Will you give us your full name, please? A. Robert H. Lancaster.

Q. And your address? [255]

A. Home address?

Q. Business address?

A. 5731 South Alameda Street, that is care of Wolf Range Manufacturing Company.

* * * * *

Q. (By Mr. Weil): What is your position with Wolf Range Manufacturing Company?

A. Office manager.

Q. What are your duties as office manager?

A. Well, inasmuch as we have a small office staff, it doesn't require too much supervision. I work mainly on the credits, not only the credits memorandum but the credit financial standing of our dealers. That, in particular, is my main duty. I have also charge of the accounts payable.

Q. What staff do you have working for you?

A. Well, there is one gentleman handling the ledgers, accounts receivable and general ledger.

We have two girls, one is Mrs. Forman. She is a combination billing clerk, telephone operator and filing. And the other, Mrs. Nichols, she takes care of writing up the orders received from the dealers.

(Testimony of Robert H. Lancaster.)

Q. Do these people work under your supervision and direction? [256]

A. Not completely under my supervision. For instance, Mrs. Nichols comes in under the sales department. Mrs. Forman, telephone and the billing, comes under my supervision.

Q. What records are kept by your company showing their sales? A. Showing our sales?

Q. Yes.

A. We have a sales journal, which is an analysis of each sale, whether it is a cash sale or on open account. We have very few cash sales, by the way.

Q. Is that the primary record?

A. Well, that is the primary record — the primary record comes from the invoice files, a copy of each invoice is the charge made to dealers.

Then that is recorded in the company's journal and from there it is posted to the various accounts receivable and to the general ledgers.

Q. Who prepares the invoices?

A. Who prepares the invoices?

Q. Yes. A. Is that the price and so forth?

Q. Yes.

A. Mrs. Forman and they are checked by myself.

Q. Checked against what? [257]

A. Well, as to the correctness of the price and the extensions.

Q. Who posts those to the invoice journal?

A. To the invoice journal?

Q. Yes. A. A Mr. Danielson.

(Testimony of Robert H. Lancaster.)

Q. Does Mr. Danielson work under your direction and supervision?

A. Well, yes, more or less. Eventually he is going to succeed me there. We work really on a par. While I have been the office manager for Wolf Range since the time I entered their employment in 1936, Mr. Danielson has entered the invoices in the sales journal and the receivable ledger.

Q. Have you prepared a summary from the accounts showing your sales to dealers or jobbers in other states than California?

A. No, I have not, other than the record we have from our sales tax reports to the State of California.

Q. Do you have that record with you?

A. I do.

Q. May I see it, please?

A. I could have brought the sales journal which shows a column for sales made to the State of California and other states, but that is quite a book and I thought this might suffice. [258]

Trial Examiner: Show these to counsel here, Mr. Weil.

Q. (By Trial Examiner): What kind of a book is that? Why do you say "it is quite a book"?

A. It is a book about that width and that thickness (indicating.)

Trial Examiner: The witness indicates about four inches in thickness. And length?

The Witness: I would say about that thick (indicating).

(Testimony of Robert H. Lancaster.)

Trial Examiner: About three inches in thickness and about eighteen inches to two feet long.

Is that correct?

The Witness: Yes. It so happens that this book I speak of has the checks drawn and the sales entries.

Q. (By Trial Examiner): About how many pages has that book, do you know?

A. Oh, let us say, I would judge one hundred and fifty pages roughly. I fill about twelve, thirteen or fifteen pages per month.

Q. Is that book in current use?

A. Not for last year.

Q. The one for last year isn't in current use?

A. No.

Q. Do you have occasion to refer to it at all in recent days? A. Yes, sir. [259]

Q. For what purposes?

A. Well, different entries that might come in from dealers.

Q. That is what I meant when I asked you if it was in current use. A. Oh.

Q. Have you any occasion to use it currently?

A. Yes, but it is hard to say because I might use it two or three times a day and might not use it again for another week.

Q. When was the last time you used it?

A. I think it was last week, possibly.

Trial Examiner: All right, go ahead.

The Witness: I could have brought that book if I had thought it was absolutely necessary, but if

(Testimony of Robert H. Lancaster.)

you wish to know how much of our sales to out of state customers, this is the total for the year (indicating).

Trial Examiner: The witness has indicated an adding machine tabulation.

Q. (By Mr. Weil): How are these sales tax records made up?

A. This is for the first quarter of the year. This is the sales tax report that we rendered to the State of California like all business concerns covering collection in taxes.

And the one side here, for example, is sales for the year to out of state customers. That represents the total charges, for that period, October 1st to December 31st on [260] dealers that we have out of the State of California.

Trial Examiner: 1954, is that sir?

The Witness: Yes.

Trial Examiner: Go ahead, sir.

Q. (By Mr. Weil): Who makes up this record?

A. Mr. Danielson makes this at the present time. I used to make it up.

Q. When did you used to make it up?

A. Two years ago.

Q. Is this record kept in the regular course of your company's business? A. Oh, yes.

Q. From what records are these made up?

A. From the sales register and the invoice file. When I speak of the "invoice file", that is the file containing copies of all invoices in numerical order for the business.

(Testimony of Robert H. Lancaster.)

Q. In other words, that is copies of the original invoices then? A. Yes.

Q. Are those carbon copies? A. Yes.

Q. What is done with these records after they are made up by Mr. Danielson?

A. I don't understand your question. We keep, of course, the copy. This is a copy of the report that goes to the State [261] of California and this typewritten tabulation covers the sales that are taxable.

We, being manufacturers, there are very few sales we have that are taxable because we distribute through dealers and the tax is charged and collected by the dealers, but if we do have a restaurant owner who wants some parts for one of our pieces of equipment, we sell it to him at the retail price and collect the taxes.

Trial Examiner: Thank you. Suppose you proceed to another point.

Q. (By Mr. Weil): Have you made a summary of what the records for the year 1954—strike that, please.

Are those rendered quarterly?

A. Yes.

Mr. Garrett: Is that the sales tax you are talking about?

The Witness: Yes.

Mr. Weil: Yes, the sales tax returns.

Q. (By Mr. Weil): Are the sales tax returns on a calendar quarterly basis? A. Yes.

Q. Would there be four for the year of 1954?

(Testimony of Robert H. Lancaster.)

A. Yes.

Q. Have you totalled the figures shown on those forms for the year 1954 for your sales outside of the State of California?

A. Yes, I have and to substantiate—— [262]

* * * * *

Mr. Garrett: Objected to as irrelevant, immaterial and incompetent and as being hearsay. The witness already testified that the reports were made out by another gentleman. There has been no showing that he has any familiarity with this total or whether he knows if it is correct or not.

Trial Examiner: I do not know why the company's journal isn't here or the sales journal, whichever it is. The witness said he could have brought it. I would let him testify from that on the foundation that has been laid. [263]

* * * * *

Trial Examiner: No, you are just expected to answer questions when they are asked you.

I have had difficulty with your foundation since the very moment this hearing opened and frankly, I cannot blind myself to the fact that you have a witness sitting before you, who has before him a rather large and bulky folder containing apparently copies of these reports, of which he has spoken.

You have not asked the witness a single question along the line that might go to substantiate or establish that these reports are records kept in the usual course of business. [264] * * * * *

(Testimony of Robert H. Lancaster.)

Q. (By Mr. Weil): Looking at General Counsel's Exhibit No. 31 for identification, what does this file contain?

A. That contains a report to the State of California for the Board of Equalization and these forms here (indicating) to Walter C. Peterson, City Clerk, for sales tax, applicable to the City of Los Angeles.

Trial Examiner: All right, sir.

Ask him another question.

Q. (By Mr. Weil): Does the file contain any other documents?

A. No, and if you are covering 1954——

Trial Examiner: Just answer the question, sir.

The Witness: It contains no other documents.

Q. (By Mr. Weil): For what purpose are the documents in this file made up?

A. This file consists of duplicate copies of tax reports rendered to the State of California.

Trial Examiner: Now, how far back?

The Witness: This goes back to the inception of the tax, I guess.

Trial Examiner: Can you tell us, by looking at the file?

The Witness: Yes, sir. This first return was for the period of January 1, 1936, to March 31, 1936.

Trial Examiner: And how do they go chronologically? [266]

The Witness: Would you mind explaining your question? Do you mean have there been any filed since that time?

(Testimony of Robert H. Lancaster.)

Trial Examiner: No. Have there been any reports filed since the first report?

The Witness: Oh, yes, the originals of all these duplicate copies.

Trial Examiner: Who started that file?

The Witness: I did.

Trial Examiner: And until about two years ago who maintained it?

The Witness: I did.

Trial Examiner: And who made up the reports until about two years ago?

The Witness: Myself.

Trial Examiner: And who has been doing it since then?

The Witness: Mr. Danielson since one year ago. In the month of May and prior to that, it was a gentleman named Sol Blue.

Trial Examiner: And under whose supervision did these two people work?

The Witness: Myself.

Trial Examiner: In whose custody is that file, General Counsel's Exhibit No. 31 for identification; who has custody of it?

The Witness: I have it and Mr. Danielson has it. It is [267] kept in the safe. Mr. Danielson has the combination of the safe and I do myself likewise.

Trial Examiner: This has been in your custody since 1936, has it?

The Witness: Yes.

(Testimony of Robert H. Lancaster.)

Trial Examiner: All right. Now, you can ask him for what purpose he keeps it.

Q. (By Mr. Weil): For what purpose do you keep this file?

A. Keep this duplicate copies of the reports rendered?

Q. Yes.

A. To assist the auditors of the State Board of Equalization who make an audit about every two to three years and there has never been any audit for the City of Los Angeles, because I think they work together.

Q. Is it required that your company have these figures available for those auditors?

A. Oh, yes. It so states on this form that it is the copy to be retained by the company. [268]

* * * * *

Q. (By Mr. Weil): Is there a document in here for each quarter since 1936?

A. That is correct.

Q. Referring to the document for the first quarter of the year 1954, I will ask you does that document show the sales, in interstate commerce to out of State consumers?

A. No, because we do not sell direct to a consumer. We sell through a dealer and jobber. Who the consumer may be, we don't know, but it is without question sold in interstate commerce.

Mr. Garrett: Just a moment.

Trial Examiner: I will strike the statement referring to interstate commerce. [269]

(Testimony of Robert H. Lancaster.)

Q. (By Mr. Weil): Does that record contain a complete record of sales in interstate and foreign commerce to out of state consumers?

A. You mean does the State ask us the question?

Q. Yes. A. Yes.

Q. Is there an entry on that form after that question? A. Yes.

Q. What is that now?

A. In this case it is \$55,729.61; that is for one to three months' period.

Q. Does that amount indicate the amount of sales in interstate or foreign commerce to out of state consumers? A. Yes, it does.

Mr. Garrett: Just a minute. Could I have that question again?

(Question read.)

Q. (By Mr. Weil): Didn't you state that you did not sell directly to consumers?

A. That is correct. Locally, if a user of our equipment requires some parts, then they are sold to the consumer.

Q. To whom were these sales made?

A. They would be to jobbers or dealers.

Q. To any particular jobbers or dealers?

A. Any particular classification. [270]

Q. Yes.

A. Well, they would be restaurant and hotel supply—

Q. No, to purchasers—to jobbers or dealers

(Testimony of Robert H. Lancaster.)

within the State of California or outside the State of California.

A. Outside the State of California.

Q. Does that file indicate that \$55,729.61 worth of sales were made to jobbers outside of the State of California? A. That is right.

* * * * *

Cross Examination * * * * *

Q. (By Mr. Garrett): Now, do you have with you in your possession here in this hearing room, the invoices upon which the 1955 figure was based?

A. No.

Trial Examiner: 1954 figure.

Mr. Garrett: Yes, I am sorry.

The Witness: No, that is covered by the book that I had reference to the sales journal and to support the sales journal, I should have the copies of the invoices.

Q. (By Mr. Garrett): Where are the copies of the invoices? A. At the present time?

Q. Yes. A. Down in my office. [273]

* * * * *

Trial Examiner: Does the sales journal show where it was shipped?

The Witness: No, the sales journal would not, but I could produce the files containing the invoice copies.

Trial Examiner: Well, are the figures that are entered in the report to the State, those are compiled from what?

(Testimony of Robert H. Lancaster.)

The Witness: From the sales journal and it is audited every two to three years.

Trial Examiner: Well, how can you tell from the sales journal whether something has been shipped to an out of State——

The Witness: Not during all that period and I cannot say offhand how far back, possibly better than a year—this sales journal carries two columns on the extreme left and one [274] is for invoices out of State and the other is for those in the State of California. [275]

* * * * *

ORIC O. RUTLIDGE

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Weil): Will you give us your full name, please?

A. Oric O. Rutledge. [277]

Q. And your address?

A. 5342 Glasgow Court, Los Angeles, 45.

Q. What is your profession, Mr. Rutledge?

A. I am credit manager for the Mission Appliance Corporation.

Q. Where is that located at?

A. 12611 South Crenshaw Boulevard.

(Testimony of Orie O. Rutlidge.)

Trial Examiner: Excuse me, do you have a stipulation as to that?

Mr. Weil: No, sir.

Trial Examiner: All right. Let us go off the record a moment.

(Discussion off the record.)

Trial Examiner: On the record. Go ahead.

Q. (By Mr. Weil): As credit manager, what are your duties, Mr. Rutlidge?

A. I pass on correspondence and supervise the accounts receivable, shipping and collection.

Q. What is the original record made of merchandise that is shipped from your company?

A. The sales order and the sales order invoices.

Mr. Garrett: Counsel, I wonder if, in this one, to save some time, I happen to be familiar with this company, would you object to him, off the record, showing me what he has?

Mr. Weil: I have no objection whatsoever.

Mr. Garrett: Shall we go off the record? [278]

Trial Examiner: Sure. I think it is a very good thing.

We will go off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Mr. Weil: I propose a stipulation that Mission Appliance Corporation is a California corporation which has shipped in the year 1954, its products, in excess of \$50,000.00 outside of the State of California from points within the State of California.

Mr. Garrett: Could I have that stipulation read again, please?

(Record read.)

Mr. Garrett: So stipulated. [279]

* * * * *

ROY C. FREDERICKSON

a witness, called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Weil): What is your full name, sir? A. Roy C. Frederickson.

Q. And your address?

A. 770 East Washington Street, Apartment No. 15, Pasadena.

Q. By whom are you employed?

A. Hammond Manufacturing Company.

Q. And what is your position there?

A. Chief accountant.

Q. As a chief accountant, what are your duties?

A. To prepare the financial statements and supervise the office, as far as the accounting function goes.

Q. When your company makes sales, what record is made of such sales, if you know?

A. A sales journal, individual invoices are kept.

Q. By whom is the sales journal kept?

A. Mrs. Kathie Rau. [280]

Q. Is Mrs. Rau employed under your management? A. Yes, she is.

(Testimony of Roy C. Frederickson.)

Q. Do you directly supervise her work?

A. That is right.

Q. What record is made from those records, if any?

A. Those records in the summary are posted to the general ledger and sales tax returns and a break-down as to royalties and other reports are obtained from the sales journal.

Q. Have you prepared a summary of the sales during the year of 1954 for your company?

A. I have prepared financial statements from those sales and I do have the sales tax returns.

Q. They were prepared from that sales journal?

A. Yes.

Q. Who prepares the sales tax returns?

A. I do.

Q. Are they prepared entirely from your sales journal? A. Yes.

Q. Do the sales tax returns show where the merchandise is shipped, if it is shipped? A. Yes.

Q. Do you have any of these sales tax returns with you? A. Yes.

Q. May I see them?

A. This would be the one for the fourth quarter. [281]

Mr. Garrett: Can I see this just a moment?

Mr. Weil: I will mark that lightly as General Counsel's Exhibit No. 32 for identification.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 32 for identification.)

(Testimony of Roy C. Frederickson.)

Mr. Weil: I have marked the document shown me by the witness, as General Counsel's Exhibit No. 32 for identification.

Q. (By Mr. Weil): Showing you General Counsel's Exhibit No. 32 for identification, I will ask you what that is?

A. That is the California sales tax return for the fourth quarter of 1954.

Q. Is that return prepared each quarter?

A. That is right.

Q. And what is done with the original return?

A. It is sent to the state.

Q. For what purpose?

A. In order to say that the sales tax has been deducted.

Mr. Garrett: I am not going to object to the document, counsel. Why don't you ask him how much it is?

Q. (By Mr. Weil): Will you tell us how much that document shows? A. \$444,325.45.

Trial Examiner: And that represents the value of the goods shipped to out of state customers by your concern? [282]

The Witness: That is right. There would also be additional out of state sales to the United States Government.

Trial Examiner: And is that included?

The Witness: No.

Trial Examiner: That is a separate figure?

The Witness: Yes. [283]

* * * * *

RICHARD SMITH

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Weil): What is your name and address, please?

A. Richard Smith, 616 West Ash, in Fullarton.

Mr. Garrett: 616?

The Witness: Yes.

Q. (By Mr. Weil): By whom are you employed?

A. The Mississippi Glass Company.

Q. And what is your occupation there?

A. Office manager.

Q. Is that a corporation? A. Yes.

Q. In what state is it incorporated?

A. In New York.

Q. What is the business of the Mississippi Glass Company?

A. Manufacturing of rough rolled and figured glass.

Q. Where is that business carried out?

A. In Fullarton.

Q. What is the address of the plant there?

A. Reymer Avenue. It actually has no number, but it is in [290] the 1700 block.

Q. As office manager, what are your duties?

A. The supervision and carrying out of orders for my superior and also keeping records and data.

(Testimony of Richard Smith.)

Q. What original records are kept of shipments made by your company?

A. We keep records of all shipments by invoices.

Q. Who keeps these records?

A. We do, in the office.

Q. I mean, what person in the office makes up the invoices?

A. We have a billing clerk for that.

Q. Is that clerk under your direct supervision?

A. Yes, she is.

Q. What is done with the invoices after she makes them up?

A. They are kept on file numerically, by the month.

Q. How big a file is that?

A. It approximately takes the full drawer space in the filing cabinet.

Q. Are those files in daily use?

A. Yes, they are.

Q. Have you prepared a summary from those files? A. I have.

Q. Do you have it with you? A. Yes.

Q. May I see it, please? [291]

Mr. Weil: I will have this marked for identification as General Counsel's Exhibit No. 33.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 33 for identification.)

Mr. Weil: Let the record show that I have been handed this by the witness and it has been marked

(Testimony of Richard Smith.)

General Counsel's Exhibit No. 33 for identification and I have shown it to counsel.

Q. (By Mr. Weil): Did you prepare that document yourself? A. Yes, sir.

Q. How did you go about preparing that document?

A. From invoices. At the end of every month we make up a similar summary like this in respect to that and I took it from that summary of each month.

Q. Is that summary made every month?

A. Every month.

Q. What is the purpose of that summary?

A. The home office is in St. Louis and they require a summary of this nature every month.

Q. Would it be possible, if counsel wished to check the original invoices from which this was made up, that they could do so? A. Yes.

Trial Examiner: You have no objection, I take it?

The Witness: No objection. [292]

Q. (By Mr. Weil): Will you tell me the total of the sums of the invoices? A. \$324,015.68.

Q. What does that sum stand for?

A. That is the shipments of our products from our plant to out of state customers.

Q. To the customers whose names are listed on that summary? A. I don't understand.

Q. The shipments to the customers whose names are listed on that summary? A. Yes.

Q. At the place at which they are listed?

(Testimony of Richard Smith.)

A. Yes.

Q. Referring to the column headed, "Total Sales"; is that the sales to each customer?

A. That is right.

Q. As listed? A. As listed.

Mr. Weil: I would like to offer General Counsel's Exhibit No. 33 for identification. Is there any objection?

Mr. Garrett: I have no objection to his identifying it, but I have to its introduction into evidence. I object as it is irrelevant, immaterial and incompetent and it isn't the best evidence.

Trial Examiner: I will exclude it. His evidence is in [293] as to the amount.

Mr. Weil: I have no further questions.

Trial Examiner: Go ahead.

Cross Examination

Q. (By Mr. Garrett): Mr. Smith, how long have you been with the Mississippi Glass Company?

A. Since 1947.

Q. And have you held various positions during that period of time? A. Yes.

Q. How long have you been in the job that you now hold? A. Approximately three years.

Q. And during that period of time, you have had occasion to have supervision over the accounts receivable department, have you?

A. That is right.

Q. And when you ship something out, you send an invoice and eventually the payment comes in

(Testimony of Richard Smith.)

and that is recorded in your books; is that correct?

A. Yes.

Q. Are the invoices kept by company or how are they kept?

A. Accounts receivable are kept by company. Our invoices are kept numerically.

Q. All invoices for 1954 would be from number such and such to another number? [294]

A. Yes.

Q. How many invoices do you have?

A. Approximately three thousand.

Q. For the year 1954? A. Yes.

Q. Those are in a file cabinet down at your plant? A. Yes.

Q. Were you asked to bring those today?

A. I was asked to bring a summary. I would not want to carry them.

Trial Examiner: Why not?

The Witness: It is heavy, sir.

Q. (By Mr. Garrett): The summary was made by you particularly for this hearing, is that right?

A. Yes.

Q. This summary isn't a summary that is kept in the ordinary course of business; it was prepared for the purpose of this hearing; is that right?

A. Well, no, we have the same summary as this on our file in our office.

Q. And what is that kept for?

A. For being sent to the home office.

Q. Why didn't you bring that one?

(Testimony of Richard Smith.)

A. That is for our carbon copy in the office, and we keep it there. [295]

Q. Well, is that in a report or a letter?

A. It is in a report.

Q. Well, why didn't you bring that in instead of bringing that report in?

A. I did not want to disturb our files, because our files are in use all the time. [296]

* * * * *

Q. Has your company any relationship with the Mississippi Glass Company? A. Yes.

Q. In fact, you sold that item to yourselves, is that right? A. Yes.

Q. It is some sort of a bookkeeping arrangement?

A. We do not bill the Pittsburgh Plate Glass Company at all; we bill the Mississippi Glass Company. [297]

* * * * *

Trial Examiner: Would you leave that please? Put this in the rejected exhibit file. That has been excluded.

(Thereupon the document heretofore marked General Counsel's Exhibit No. 33 was rejected.)

[See page 222.]

Mr. Weil: I will call Mrs. Fierke.

CAPITOLA FIERKE

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

(Testimony of Capitola Fierke.)

Direct Examination

Q. (By Mr. Weil): Will you give us your name and address, please?

A. Capitola Fierke, 1958 Horley Avenue, Downey.

Mr. Garrett: I did not get the name of the street.

The Witness: Horley Avenue, H-o-r-l-e-y.

Q. (By Mr. Weil): By whom are you employed? [300]

A. Southern Heater Corporation.

Q. And what is your occupation there?

A. I am office manager.

Mr. Garrett: Southern Heater Corporation?

The Witness: Yes.

Q. (By Mr. Weil): Is Southern Heater Corporation a corporation? A. Yes.

Q. In what state is it incorporated, if you know?

A. California.

Q. Where is the Southern Heater Corporation plant located?

A. 133 East Palmer Avenue, Compton.

Q. What is the business of the Southern Heater Corporation?

A. They manufacture water heaters.

Q. What are your duties in connection with your position?

A. Well, to keep the books, to keep a record of all the accounts receivable and accounts payable and

(Testimony of Capitola Fierke.)

general ledger. We have other help, but I mean, those are the duties.

Q. Have you any other help under your direct supervision and direction?

A. Some of them, yes.

Trial Examiner: All the office help?

The Witness: Yes.

Trial Examiner: And that would include what types of people? [301]

The Witness: Bookkeepers, stenographers, telephone girls.

Trial Examiner: All right.

Q. (By Mr. Weil): What records are kept by your company of its shipments?

A. Shipments—we have Bills of Lading and invoices.

Q. Who makes up the invoices?

A. Right now a lady by the name of Jean Hayworth.

Q. How long has she been making them up?

A. Since last November.

Q. Who made them up prior to that?

A. Mrs. Ruth Sherman.

Q. Now were Jean Hayworth and Ruth Sherman working under your supervision and direction?

A. Yes.

Q. In doing that work?

A. Yes.

Trial Examiner: Does anybody review their work?

The Witness: There are many, many checks on the work.

(Testimony of Capitola Fierke.)

Trial Examiner: Do you make any?

The Witness: Yes and we have accountants too.

Trial Examiner: Is that your function, to make any check of their work?

The Witness: Well, I am very familiar with what is going on. It is part of my job or at least, I do that. I go around and see what people are doing. [302]

Trial Examiner: Particularly the bookkeepers, do you check what they are doing?

The Witness: Yes.

Trial Examiner: How often do you do that?

The Witness: Daily, every day.

Trial Examiner: All right, go ahead.

Q. (By Mr. Weil): What happens after the invoices are made out?

A. What is done with them then?

Q. Yes.

A. They are filed until they are shipped. The Bill of Lading goes out to the shipping clerk and then the customers are billed.

Q. The Bills of Lading and the invoices are matched up? A. Yes.

Q. What is done with them physically?

A. One copy goes to the customer and one copy stays in one file as an office record of accounts receivable and the other stays in as a numerical record.

There is another record which stays in, which is just a running file for the customers.

(Testimony of Capitola Fierke.)

Q. How many copies of the invoice itself are there in your office of each invoice?

A. When we start out, we have nine copies and three copies are Bills of Lading and one is, more or less, an extra copy or a shop order, and the others go to salesmen for commission. [303]

Two copies go to the customer and the other copies stay in our files, one way or another.

Q. Are they placed in an invoice file of any type?

A. Well, we have one file which is a monthly file and we have another file. It is customers' business and it is properly from one year to the next. And then we have a numerical file, which is just for a numerical record, if we need it.

Q. Have you brought any invoices with you?

A. No, it is very bulky and it is very difficult to bring very much of it. One month would be two books like that and if I brought twelve months, I would have had to have two men and a boy and a truck, I think.

Trial Examiner: The witness has indicated a width of between fifteen to eighteen inches.

Go ahead.

Q. (By Mr. Weil): Did you make a summary of the information? A. Yes.

Q. From the invoice file? A. Yes.

Q. Do you have that with you? A. Yes.

Trial Examiner: Well, how many invoices would one of these books contain; do you know offhand?

(Testimony of Capitola Fierke.)

The Witness: No, I do not. I would say probably seven [304] hundred or something like that. One of the reasons why it is so bulky is that we put everything on the back of the invoice, the customer's order, the Bill of Lading and everything that pertains to it and it is quite bulky.

Trial Examiner: Do you have any occasion to use the invoices for the year 1954?

The Witness: Oh, yes.

Trial Examiner: For what purposes do you use them?

The Witness: We use them all the time for many purposes.

Trial Examiner: Well, would you give some?

The Witness: If we are collecting on accounts, if we are doing statistical work, when we measure today's business against last year's business. We are constantly referring to the previous year's business.

It is one of our references that we use at all times.

Trial Examiner: Could you conveniently conduct your business if those invoices were taken out of the office and brought down here?

The Witness: Not very well.

Trial Examiner: Go ahead.

Mr. Weil: May I see it, please?

Let the record show that the witness handed me a piece of paper which I have marked as General Counsel's Exhibit No. 34 for identification. [305]

(Thereupon the document above referred to

(Testimony of Capitola Fierke.)

was marked General Counsel's Exhibit No. 34 for identification.)

Mr. Weil: I am now showing General Counsel's Exhibit No. 34 for identification to counsel.

Trial Examiner: While we are at it, would you have any objection if any party to this proceeding went to your place and consulted and checked the invoices for 1954?

The Witness: No, I don't think so.

Trial Examiner: That is, to check on the accuracy of any figures you have given?

The Witness: No, that would be all right.

Trial Examiner: I didn't get your last answer, Madam.

The Witness: It would be all right.

Trial Examiner: Thank you.

Q. (By Mr. Weil): Did you prepare that summary yourself?

A. No, a lady by the name of Mrs. Lewis prepared it but she did it when I asked her to and I know which records she used and that she is a very accurate girl.

Q. Did you tell Mrs. Lewis how to prepare it?

A. Yes.

Q. Did you check any of the figures that she used?

A. Yes, a little check, but not much. Just a little sample, to see they were all right. I did not do it actually until I received your letter and I saw that you wanted me to, so then I did check

(Testimony of Capitola Fierke.)

some of the figures to be sure that they were accurate. [306]

Q. From what records did she prepare that?

A. From the customer's files. These invoices that we have been talking about.

Q. As a result of that check, did you arrive at a figure or does the summary which you have, contain a figure for the state sales of your company, out of the State of California, during the year 1954?

A. Yes, each of the states.

Q. Is that arranged by states? A. Yes.

Q. What is the total figure?

A. Including California, the total is——

Trial Examiner: Excluding California.

The Witness: Well, I have California here. I will have to calculate it then. That would be \$1,799,875.00.

Trial Examiner: That excludes shipments within the State of California?

The Witness: Yes.

Trial Examiner: "excludes" was the term.

The Witness: excludes.

Trial Examiner: Yes. That is for 1954, Madam?

The Witness: That is right. [307]

* * * * *

Cross Examination

Q. (By Mr. Garrett): Mrs. Fierke, does the Southern Heater Corporation have one or more than one manufacturing site in Southern California? A. It has one.

(Testimony of Capitola Fierke.)

Q. And everything that you produce is made at this same plant? A. Yes.

Q. I take it that by looking at that adding machine tape there, you have no idea what it exactly represents, other than the fact that you believe them to be a summary of the invoices in your files; is that correct?

A. Well, they can be checked with other figures that we have in our files.

Q. In other words, the only way you could give us a breakdown and say how much material or the value of the material, sent to the State of North Dakota in the year 1954, for example, would be to go back and review the invoices?

A. Yes, sir. I know certain states that we do, more or less, the volume of business but I could not tell you to the last cent. Is that what you mean?

* * * * *

HARRY McCULLY

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Weil): Will you give us your name and address, please?

A. Harry McCully.

Mr. Garrett: What is your first name?

The Witness: Harry.

Q. (By Mr. Weil): And your address, please?

A. 707 Taper Street, Compton.

(Testimony of Harry McCully.)

Q. Are you connected with the C. & M. Manufacturing Company? A. Yes.

Q. Were you during 1954? A. Yes.

Q. In what capacity during 1954?

A. President of the corporation.

Q. What did the C. & M. Manufacturing Company manufacture in 1954? [310]

A. House trailers.

Q. Is that company a corporation?

A. Yes.

Q. Where is it incorporated?

A. In the State of California.

Q. As president of the company, what were your duties?

A. I was plant manager and general manager of the operation.

Q. As president of the company, did you have any knowledge of the shipments of your product outside the State of California? A. Yes.

Q. Where did you get such knowledge?

A. Well, from receiving orders and shipping units at the time of completion.

Q. Did you, yourself, receive orders?

A. Yes.

Q. Did you make sales yourself? A. Yes.

Q. Where, other than in the State of California, were your trailers sold?

A. Primarily the eleven western states; Oregon, Washington, Montana, Idaho, Colorado, and so on.

Q. How were they sold?

A. What do you mean?

(Testimony of Harry McCully.)

Q. Were they sold by you individually? Or, were they sold by jobbers? [311]

A. They were sold through the company, partly me individually, and partly by our sales manager, and if any one went in there, whoever was there would take the order.

Q. Apart from any knowledge you may have had by keeping company records, do you have any knowledge of the volume of sales of your company, outside of the State of California in 1954?

A. Outside the state?

Q. Yes.

A. Approximately—outside of the State of California?

Q. Yes.

A. Approximately fifty per cent of our business is outside, and we did approximately \$1,300,000.00 in 1954.

Trial Examiner: That is approximately half of \$1,300,000.00 of your sales in 1954 was the total outside the State of California?

The Witness: Yes.

* * * * *

Cross Examination * * * * *

Q. (By Mr. Garrett): And when you sell a trailer, or a shipment of trailers to a dealer, you invoice it and you have a record of that at your plant? A. Yes.

Q. Were you asked to bring those invoices with you today?

A. No, I don't think so. If I were, I did not

(Testimony of Harry McCully.)

bring them. Any way, we have a trustee up there?

Q. Is that a court trustee?

A. Yes, but they are open for anybody that would like to see them.

Q. Let us take the year, 1954. Where are those invoices kept? A. In our plant.

Q. In a filing cabinet?

A. In the sales file. [313]

* * * * *

Q. There is likely to be available in your office actual figures showing your sales outside the State of California for the year 1954; is that correct?

A. I don't know.

Trial Examiner: The question is whether there is likely to be figures; you can answer that "yes" or "no" if you know.

The Witness: Personally, I don't know. [315]

Q. (By Mr. Garrett): Who at your plant would have charge of your accounting?

A. Well, the girl that does the company book-keeping has the plant figures.

Q. What is the girl's name?

A. Katherine Garrett.

Q. Katherine what? A. Garrett.

Q. G-a-r-r-e-t-t? A. Yes.

Q. And she would be likely to have in her records the actual documents from which it could be ascertained the actual sales out of the State of California for 1954?

A. Yes, she would have the invoices. [316]

* * * * *

JOSEPH L. LEE

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Weil): What is your name, please?

A. Joseph L. Lee.

Q. And your address?

A. 931 West Sixty-sixth Street. [327]

Q. By whom are you employed?

A. Ducommon Metals & Supply Company.

Q. What is your occupation?

A. Assistant auditor.

Mr. Garrett: Just a moment. I am familiar with this plant and maybe we can shorten the testimony in this case—may we go off the record for a minute?

Hearing Officer: Off the record.

(Discussion off the record.)

Hearing Officer: On the record.

Mr. Weil: I shall now ask the witness a question.

Q. (By Mr. Weil): Does Ducommon Metals & Supply Company ship its products of a value in excess of \$50,000.00 annually to places in states, other than the State of California from the State of California? A. Yes.

Mr. Weil: That is all.

Trial Examiner: I understand that the respondent counsel isn't objecting to these questions, that he is satisfied with the witness' testimony?

(Testimony of Joseph L. Lee.)

Mr. Garrett: I would like, however, to have the witness' name over again.

The Witness: Joseph Lee.

Cross Examination

Q. (By Mr. Garrett): What is your position with the company? [328]

Trial Examiner: I simply want to put this question to crystalize the matter.

Q. (By Trial Examiner): For the year 1954, what was the dollar value of shipments outside of the state of California from California?

A. The total, I don't know. To our Arizona division it was \$624,886.16, and to the Utah territory, it was \$292,504.71.

Trial Examiner: I take it, Mr. Garrett, you had no objection to these questions?

Mr. Garrett: No. [329]

* * * * *

ROBERT MORSE

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Weil): What is your name and address, sir? A. Robert Morse.

Q. By whom are you employed?

A. I am employed by Morris D. Kirk & Sons.

Q. What is your occupation?

A. Treasurer.

(Testimony of Robert Morse.)

Q. Is that a corporation? A. Yes.

Q. In what state is it incorporated?

A. Nevada.

Q. Where is the principal office of Morris D. Kirk & Sons, Mr. Morse?

A. South Indiana Street, Los Angeles.

Q. What does the company do? [330]

A. Non-ferrous smelting for smelters and refineries.

Q. What are your duties as treasurer?

A. Financial accounting, personnel administration.

Q. Do you keep records yourself?

A. Yes, I do.

Q. What records do you keep?

A. Various and sundry costs, statistical and financial records.

Q. Do you have people working under you that keep records? A. Yes.

Q. Do you keep invoice records? A. I do.

Q. Who keeps those records? Or, who makes them up? A. Who makes them up?

Q. Yes.

A. The billing department is the original office.

Q. Is the billing department under your supervision and direction? A. That is correct.

Q. Are the invoices, the original record of shipments made by your company?

A. That is correct.

Q. Does your company ship any materials outside the State of California? A. Yes. [331]

(Testimony of Robert Morse.)

Q. To what states do you ship goods?

A. All of the eleven western states and Alaska and Hawaii, and the Philippine Islands.

Q. Do you have any invoices with you?

A. Yes, I do.

Q. May I see them, please? A. Yes.

Mr. Weil: May the record show that the witness has handed me a group of sixteen invoices which are clipped together with a piece of tape, all of which I will mark for identification as General Counsel's Exhibit No. 35.

(Thereupon the documents above referred to were marked General Counsel's Exhibit No. 35 for identification.)

Mr. Garrett: May I see them a moment, counsel?

Mr. Weil: Surely.

Q. (By Mr. Weil): Do those invoices cover all of the shipments of your company? A. No.

Q. Did you select those invoices yourself?

A. Yes, I did.

Q. What was the basis of your selection of these eight invoices?

A. Out of state shipments to the extent that I needed, \$50,000.00.

Q. Have you totalled those invoices? [332]

A. Yes, as indicated by the adding machine tape.

Q. Did you run that tape yourself?

A. No, I did not.

(Testimony of Robert Morse.)

Q. Who did run it?

A. My stenographer, secretary.

Q. Did your secretary do that under your supervision? A. Yes.

Q. And your direction? A. Yes.

Q. Have you checked the figures on that adding machine tape? A. No, I haven't.

Q. Would you do so at this time?

Mr. Garrett: Oh, I will stipulate that the adding machine correctly totalled the figures.

What is the total?

The Witness: \$52,719.72. [333]

* * * * *

Trial Examiner: I have taken the position, if it isn't clear that, in connection with these witnesses who have testified as to figures, if it is brought to my attention that the respondent union has any difficulty in verifying any of the information from the records, I would entertain a motion to strike all of the testimony that has been given in connection with the figures.

I have said that before and I will repeat it now. I have taken the position that it would be impracticable to load up this proceeding with all of the records that have been referred to throughout and I have been reasonably satisfied that with these neutral parties, the records will be available to any of the parties for any check they wish to make. [342]

* * * * *

Trial Examiner: I suppose when it comes down

to, from your standpoint, the question of dollars and cents whether you have, or not, established within the Board's criteria the dollar value of out of state shipments by various concerns proceeding on the assumption you have established, that the respondent company has made \$200,000.00 worth of sales to concerns; they have in turn, sold goods or services totalling at least \$50,000.00 each, outside the State of California.

Mr. Weil: That is correct, and the reason I do not feel [343] it necessary to press for the attendance of that witness, is that the sales which I believe I have proved of the company total \$280,000.00; that that witness would testify about \$17,000.00 of sales, and I think that is reasonably sufficient. [344]

* * * * *

GENERAL COUNSEL'S EXHIBIT No. 3

Sprague Engineering Corporation
1144 W. 135th Street
Gardena, California

W. B. Jones Lumber Co., Inc.
Purchases 1-1-54 to 12-31-54

Raw Material	Gross Purchases	Less Cartage	Less Sales Tax	Net Purchases
Stock	\$5,839.70	(\$176.75)	(\$4.52)	\$5,658.43
Job #1108				
U.S. Airforces	562.19	(38.84)		523.35
Job #1127				
Boeing Air- plane	144.13	(5.25)		138.88
Job #1203-04				
Boeing Air- plane	2,693.77	(83.50)		2,610.27
Job #1229				
Douglas- Torrance	55.25	(5.25)		50.00
Job #1294				
Boeing Air- plane	90.45	(2.25)		88.20
	<hr/>			
	\$9,385.49	(\$311.84)	(\$4.52)	\$9,069.13
	Recap of Purchases			
Interstate	\$3,490.54	(\$129.84)		\$3,360.70
Questionable	5,839.70	(176.75)	(\$4.52)	5,658.43
Local	55.25	(5.25)		50.00
	<hr/>			
	\$9,385.49	(\$311.84)	(\$4.52)	\$9,069.13

GENERAL COUNSEL'S EXHIBIT No. 4

(Copy)

Letterhead of

Willamette Valley District Council

Lumber and Sawmill Workers

Eugene, Oregon

November 8, 1954

Mr. Wm. H. Knight, Business Representative

Local No. 2288

7323 South San Pedro St.

Los Angeles 3, California

Dear Sir and Brother:

Your recent letter referring to the Union standing of Don F. Tooze has been received. The summary of the case of Don F. Tooze is as follows: Early last year the IWA-CIO made an attempt to raid our Local Union 2453 Oakridge, Oregon. During that attempted raid Don Tooze on behalf of the dual union attempted to secure members for the CIO. Other members of the Local 2453 presented written charges against Don Tooze in this matter and he was duly tried and convicted as charged by a trial committee of Willamette Valley District Council.

His penalty was a matter of being placed on probation for a certain period of time. Under this probation he was required to keep himself in good standing and was denied the right to hold any office or vote on any Union business during his probation

period. Immediately after this happened he left the employment of the company at Oakridge which was Pope & Talbot, Inc. and as far as we know in this office he paid no more dues. Therefore, if this be true, he himself violated his probation.

As I am leaving for the General Convention I do not have time to check with the Local at Oakridge as to Tooze's financial standing, therefore I suggest you contact G. M. Purscell, Fin. Sec., Box #22, Oakridge, Oregon in this matter. If Tooze has allowed himself to be suspended for non-payment of dues he then stands perpetually suspended from the United Brotherhood under terms of his probation. About all I can say further is that while Tooze worked at Oakridge he was a perpetual trouble maker so far as our organization is concerned.

With best wishes and kindest regards I am,

Fraternally yours,
/s/ ELDON KRAAL,
Executive Secretary

GENERAL COUNSEL'S EXHIBIT No. 5

United Brotherhood of Carpenters and Joiners
of America

Union No. 2453

Oakridge, Oregon

November 12, 1954

Mr. Wm. H. Knight, B. R.

Local Union 2288

Los Angeles, Calif.

Dear Sir and Brother:

In answer to your letter of November 10, 1954 regarding Don F. Tooze.

Our monthly dues are \$3.25. He has a credit of \$2.25 against his June dues. Therefore, he was in arrears August 31, 1954 and will be suspended for non payment of dues at the end of this month (November). It will take \$17.25 to get him in good standing.

For your information I am enclosing a copy of the minutes of the Executive Committee meeting including recommendation of Trial Committee and the action taken. I would like to have these minutes back.

Hoping I have been of some assistance.

Fraternally yours,

G. M. PURSCCELL,

Fin. Sec.

GENERAL COUNSEL'S EXHIBIT No. 6

Minutes

Minutes of the Executive Committee meeting of

Willamette Valley District Council held in Eugene, Oregon, April 7, 1954.

Trial Committee Chairman, Ted Prusia reported on the trial of member Don Tooze which was held March 13, 1954. He also read the recommendation of the Trial Committee as follows:

"From the date hereof it is the recommendation of the Trial Committee that Don Tooze

Be Placed on probation for a period of three (3) years; denied the right to hold office or be on any Committee relative to the Union.

And for the first year and one half of that time be not allowed to attend Union meetings or have voice or vote on any Union business. He must pay dues regularly and remain in good standing. He will not be eligible for a withdrawal card or clearance card for a period of three years.

Violation of any of these terms calls for full punishment; namely, forever debarred from membership and all rights and benefits of the United Brotherhood of Carpenters and Joiners of America."

March 13, 1954

/s/ MYRON C. TERPENING

/s/ TED PRUSIA

/s/ R. A. PITKIN

/s/ W. L. BULMER

/s/ C. A. HOSMAN

M/S/C/ To concur in the recommendation.

Respectfully submitted,

ELDON KRAAL,

Executive Secretary

GENERAL COUNSEL'S EXHIBIT No. 33
[Rejected]

Summary of Sales to Out of State Customers—19..

Customer		Total Sales
W. P. Fuller & Co.	Billings, Mont.	\$ 1,408.47
	Boise, Idaho	2,950.49
	Butte, Mont.	5,558.22
	Idaho Falls, Idaho	2,785.21
	Missoula, Mont.	1,384.37
	Ogden, Utah	2,730.93
	Phoenix, Ariz.	17,756.65
	Portland, Ore.	47,743.61
	Salt Lake City, Utah	37,378.48
	Seattle, Wash.	61,266.90
	Spokane, Wash.	8,058.65
	Tacoma, Wash.	11,898.19
	Walla Walla, Wash.	2,476.14
	Yakima, Wash.	4,628.06
Arizona Sash Door & Glass Co.	Phoenix, Ariz.	6,732.98
Arizona Sash Door & Glass Co.	Tucson, Ariz.	1,082.90
Belknap Glass Co.	Seattle, Wash.	27,597.82
Bennett's	Salt Lake City, Utah	8,626.56
Fitzgibbon Glass Co.	Portland, Ore.	14,571.29
Lewers & Cooke	Honolulu, Hawaii	22,780.56
Minnoch Glass Co.	Ogden, Utah	3,022.62
Southwestern Sash & Door Co.	Phoenix, Ariz.	2,141.09
Southwestern Sash & Door Co.	Tucson, Ariz.	1,297.65
Mississippi Glass Co.	St. Louis, Mo.	28,137.84
	TOTAL	\$324,015.68

CERTIFICATE

This is to certify that the attached proceedings before the National Labor Relations Board for the 21st Region in the matter of: W. B. Jones Lumber Company, Inc., etc. and Don F. Tooze, An Individual, Case No. 21-CA-2116, etc., Los Angeles, California, May 9, 10, 25, 26 and 27, 1955, were had as therein appears, and that this is the original transcript for the files of the Board.

Acme Reporting Company,
Official Reporters

/s/ By Edith Young,
Field Reporter

